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Third Periodical Reports of States Parties due in 1993

Addendum

PERU*

[24 October 1994]

CONTENTS

		Paragraphs	Page
INTRODUCTION		1 - 4	4
INFORMATION CONCERNING ARTICLES 1 TO 27 OF THE COVENANT		5 - 136	4
Article 1.	Right to self-determination	5 - 11	4
Article 2.	Implementation of the Covenant within the country	12 - 29	5
Article 3.	Equality of rights between men and women	30 - 110	11

* For the initial report submitted by the Government of Peru, see document CCPR/C/6/Add.9, for its consideration by the Committee, see documents CCPR/C/SR.430, SR.431 and SR.435, and Official Records of the General Assembly, Thirty-eighth Session, Supplement N° 44 (A/38/44, paras 855-890). For the second periodic report submitted by the Government of Peru see document CCPR/C/51, Add.4, Add.5 and Add.6, for its consideration by the Committee, see documents CCPR/C/SR.1133 to SR.1136 and CCPR/C/SR.1158 to SR.1160, Official Records of the General Assembly, Forty-sixth Session Supplement N° 40 (A/47/40, paras 300 to 349).

GE.95-15808 (95-95108/EXT)

TABLE OF CONTENTS (continued)

		Paragraphs	Page
Article 4.	Measures derogating from the obligations under the Covenant	111 - 116	30
Article 5.	Prohibition on restrictive interpretation of the Covenant	117 - 123	32
Article 6.	Right to life	24 - 143	33
Article 7.	Prohibition of torture	144 - 157	38
Article 8.	Prohibition of slavery	158 - 165	40
Article 9.	Right to liberty and security of person	166 - 173	43
Article 10.	Right of prisoners and the treatment of persons deprived of their liberty	174 - 180	45
Article 11.	Imprisonment for failure to meet a contractual obligation	181 - 189	46
Article 12.	Freedom of movement and the right to leave one's own country and return to it	190 - 199	48
Article 13.	Prohibition of expulsion of aliens without legal safeguards	200 - 209	50
Article 14.	Right to a public trial with the due guarantees	210 - 251	51
Article 15.	Principle of non-retroactivity of the law	252 - 254	59
Article 16.	Right to recognition everywhere as a person before the law	255 - 258	60
Article 17.	Right to privacy	259 - 269	60
Article 18.	Freedom of thought, conscience and religion	270 - 273	63
Article 19.	Freedom of opinion and expression of opinion	274 - 283	63
Article 20.	Prohibition of any propaganda for war	284 - 290	65
Article 21.	Right of peaceful assembly	291 - 294	66
Article 22.	Freedom of association	295 - 307	67
Article 23.	Protection of the family	308 - 324	69
Article 24.	Protection of the child	325 - 339	73

TABLE OF CONTENTS (continued)

		Paragraphs	Page
Article 25.	Right to take part in the conduct of public affairs	340 - 349	76
Article 26.	Prohibition of discrimination	350 - 355	77
Article 27.	Rights of minorities	356 - 384	79

List of Annexes**

1. No. of women candidates and women elected as deputies and senators (Peru, 1980, 1985,1990 and 1992; Lima 1980 and 1990).

2. Senior posts in the civil service by sex (Peru, 1983,1987/88 and 1994)

3. Staff of the National Tax Office (SUNET) by category and sex (Peru, 1994)

4. No. of councillors in the Lima Provincial Council according to period and sex (Metropolitan Lima, 1981/1995).

5. Composition of membership of professional associations according to sex (Peru, 1983/1994)

6. State mechanisms to promote the advancement of women.

7. Arrests and reformed criminals before and since the fall of Abimael Guzmán.

8. Total population, census population, population not covered by the census and estimated population in Amazonia at censuses in the present century.

9. Peasant communities entered on the national register of peasant communities as of 30 March 1992.

** The Government of Peru has supplied 8 statistical tables and a document that may be consulted in the original Spanish in the archives of the Centre for Human Rights.

INTRODUCTION

1. The Peruvian State has been a party to the International Covenant on Civil and Political Rights since 28 April 1978, when it ratified that instrument. On this occasion, as part of the policy of the present government of faithfully complying with its international obligations under the instruments to which it is a party and in compliance with article 40 of the Covenant the third periodic report of Peru is presented on the measures adopted to give effect to the rights laid down in that Covenant and on the progress made in the enjoyment of the rights recognised therein.

2. The report below is adapted to the new constitutional framework in Peru arising from the Political Constitutional of the Republic approved by the Democratic Constituent Congress and ratified by the Peruvian people in a popular referendum on 31 October 1993.

3. In drawing up the present report, the guidelines adopted have been those of the Manual On Human Rights Reporting published by the United Nations Centre of Human Rights and United Nations Institute of Training and Research (UNITAR)

4. The national effort to fulfil and apply the regulations contained in the International Covenant has been based on an integrated approach and has involved various sectors of the State and the public. The government of Peru is confident that this report will demonstrate its firm political will to strengthen the institutions and legal mechanisms and standards relating to the promotion and protection of human rights in general and civil and political rights in particular.

INFORMATION CONCERNING ARTICLES 1-27 OF THE COVENANT

Article 1 - The right to self-determination

5. The first paragraph of this article lays down the rights of every people to self determination. Under that right any people is able to decide freely on its political and economic condition or regime and hence establish a form of government suitable for the purposes in view. To this effect Peru adopted as its form of government the republican system which was embodied in the constitution of 1979, which stated that Peru was a democratic and social independent and sovereign republic based on work with a unitary representative and decentralised government (art. 79).

6. The new political constitution of Peru approved by the Democratic Constituent Congress and ratified in a referendum by the Peruvian people was promulgated on 29 December 1993 and came into force on 31 December 1993. It maintains the same concept, i.e. that the republic of Peru is democratic, social, independent and sovereign. In the same way it lays down that the State is one and indivisible and the government, unitary representative and decentralised, based on the principle of separation of powers (art. 43).

7. The 1993 constitution divides in its text what refers to the State, the government and the political system. First the republican democratic, social independent and sovereign system is maintained, i.e. the country is governed by a representative body elected by the citizens and adheres to the principle of decentralisation, eschewing centralisation of power in a single geographical

focus. Finally Peru adopts the form of government organisation accepted by all the democratic systems in the world - the division of powers into executive, legislative and judicial authorities, each of them fully independent of the others.

8. All these considerations allow Peru to establish freely and in a sovereign manner the features of its life as a nation. This leads us to point out the ways in which it expresses its self-determination. To this effect Peru in respect of the organisation of its government enjoys acceptance by and participation in the international community with representation in such important international organisations as the United Nations and the Organisation of American States.

9. Paragraph 2 of article 1 of the Covenant indicates that all peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation. In this respect, the 1993 Constitution devotes chapter II "The environment and natural resources" contained in section III "The economic regime" to these problems. To this effect article 66 of the Constitution declares that the State exercises sovereignty over the exploitation and utilization of Peru's natural resources - renewable or non-renewable, which are considered as belonging to the nation. In the same way, article 67 declares that the State will promote the sustainable use of its national resources.

10. In this regard mention must be made of the Environmental Code, a set of regulations which indicates that the environment and natural resources are the joint property of the nation and stipulates that their protection and preservation are of social interest and can be invoked as cases of public necessity and service to the public (art. 2).

11. This right of States is consistent with Peru's outstanding liabilities to other countries and/or international institutions, obligations which must be based on the principle of mutual benefit and the upholding of international law. This implies that the State is free to decide the amount and method of meeting these obligations. In its turn, however, the Covenant guarantees that a people shall not be deprived of its own assets. In other words the meeting of State obligations must not be given precedence over the unalienable asset of the people. For this reason the Peruvian government allots a proportion of its income to programmes for compensation and social support and the fulfilment of its international agreements. In every case, fulfilment of these international obligations has led to a considerable influx of capital, promoting the sustained development of society.

Article 2 - Implementation of the Covenant within the country

12. The Peruvian Constitution proclaims the equality of all persons before the law, so that nobody can be discriminated against for reasons of origin, race, sex, language, religion, opinion, economic status or any other nature (article 2, para 2). As will be seen, this stance indicates the interest of the government of Peru in ensuring that no national or local public authority or institution promotes or incites discrimination in any form, it being the will of the State to protect persons living within its territory and therefore subject to its jurisdiction without any form of discrimination.

13. In this connection we consider it necessary to quote the most important paragraphs of article 2 of the Constitution that guarantee the fundamental rights of the person:

"Every person shall have the right:

1. To life, identity, moral, mental and physical integrity and free development and well-being;

2. To equality before the law. Nobody shall suffer discrimination by reason of origin, race, sex, language, religion, opinion, economic status or for any other motive.

3. To freedom of conscience and religion, individually and in association. There shall be no persecution for ideas or beliefs. There shall be no crime of opinion.

...

11. To move within the national territory and to leave and enter it, in the absence of restrictions for reasons of health or judicial warrant or application of the law on aliens (Decree Law No. 703).

...

17. To participate in the political, economic, social and cultural life of the nation. Citizens shall have, in conformity with the law, rights of election, removal or revocation of authorities and of initiating legislation or referendums.

18. To keep silent on his political, philosophical, religious or other convictions and to abide by professional secrecy.

...

21. To his nationality. No one can be deprived of his nationality or of the right to obtain or renew his or her passport inside or outside the territory of the Republic.

...

24. To personal freedom and security. Consequently:

(a) No one shall be obliged to do anything which the law does not compel him to do or be prevented from doing what is not prohibited under the law.

(b) No form of restriction shall be permitted on personal liberty, except in cases laid down by the law. Slavery, serfdom and traffic of any kind in human beings, shall be prohibited.

(c) There shall be no imprisonment for debt. This principle does not restrict summons for failure to pay maintenance.

(d) No one shall be brought to trial or sentenced for an act or omission which at the time of being committed was not previously categorized by the law in an express and unequivocal manner as a punishable offence or sentenced to a penalty not provided for by the law.

(e) Everyone shall be considered innocent until his guilt has been declared by the courts.

(f) Nobody may be arrested, except by written and reasoned warrant from a judge or the police authorities or if caught in actual commission of a crime. The person arrested must be brought before the appropriate court within 24 hours or at the end of the period allowed for appearance.

These time limits do not apply to cases of terrorism, espionage and illicit traffic in drugs. In such cases the police authorities may place a person, presumed to be guilty under preventive arrest, for a period not longer than 15 natural days. They must inform the ministry and the judge, who may assume jurisdiction before the period has elapsed.

(g) Nobody may be held incommunicado, except where this is indispensable for clearing up a crime and in the form and for the period provided by the law. The authorities are under an obligation to report forthwith and in writing the place where the arrested person is to be found.

(h) Nobody shall be subjected to moral, mental or physical violence or to torture or cruel or humiliating treatment. Anyone may request medical examination of the person accused or unable himself to have recourse to authority. Statements obtained by violence are not valid. Whoever employs violence shall be liable to punishment."

The Peruvian State thus demonstrates its protective policy and its interest in preserving these prerogatives for all the inhabitants of Peru, whether or not they reside in its territory.

14. In the same way, this set of regulations in its article 50 recognises the Catholic Church as an important element in the historical, cultural and moral formation of Peru within a regime of independence and autonomy, while showing respect in Peruvian territory for the existence of other religious bodies in addition to the Catholic Church and even being able to establish forms of cooperation with them.

15. Also, the text of the 1984 Peruvian Civil Code, indicates the protection that it has sought to provide in the spirit of the Covenant, specifically in book X "International private law", section I "General provisions", which reads:

"Article 2046

Civil rights are common to Peruvians and aliens, with due regard to the prohibitions and restrictions which, for reasons of national necessity, are laid down for aliens and foreign legal entities.

Article 2057

The Peruvian courts shall be competent to take cognisance of proceedings against persons domiciled in the national territory".

16. Furthermore, as part of the legal system in force, there is a legal provision that in the specific case dealt with in this article is of supreme importance. Reference is made to Statutory Decree No. 703 (5 November 1991) or the Aliens Act, which deals with Peruvian immigration policy, which in its permanent form constitutes part of the domestic policy of the State and is concerned with the relationships between the Peruvian State and citizens of other countries who have entered the national territory, unless their status is diplomatic, official, consular or that of a seeker for political asylum or a refugee. In such cases, the Ministry of Foreign Affairs is competent and will have the task of establishing and applying appropriate and specific regulations to each individual case.

17. It is important to refer to article 3 of this provision, which classifies as an alien anyone who does not possess Peruvian nationality. It should be noted that chapter 6 lists prohibitions on and impediments to entry into Peru which are based on grounds of international security and hence have no discriminatory connotation whatsoever. In the same way, section V of the Act deals with the rights and obligations of aliens in the territory of the Republic, which are similar to those laid down for Peruvians, subject to the restrictions set forth in the State Constitution, the Aliens Act and other legal provisions in force in Peru.

18. Similarly, reference may be made to the tenor of articles 2 and 4 of Statutory Decree No. 662 (29 August 1991), providing stable legal conditions for foreign investment in Peru. As stated in the first article of this Instrument, the State promotes and guarantees foreign investments already made or to be made in the future in all sectors of economic activity in Peru and all forms of entrepreneurship or contractual relations permitted by Peruvian legislation. In the same way, the decree stipulates that foreign investors and the enterprises in which they participate, possess the same rights and obligations as Peruvians, without any exceptions other than those established by the Peruvian Constitution and the decree in question. As for the appropriate legal framework, it declares that in no case will the Peruvian legal system discriminate between investors or enterprises on the basis of Peruvian or foreign participation in the investments concerned (art. 2, Statutory Decree No. 662).

19. Moreover, so far as the right of ownership of foreign investors is concerned, article 4 prescribes that it shall be subjected to no restrictions other than those laid down by the Peruvian Constitution. Specifically as regards rights of intellectual and industrial property, they are subject to the same conditions as those applied to Peruvian investors.

20. In this respect reference must be made to article 71 of the Peruvian Constitution, which explicitly states that foreigners, whether physical or legal personalities, are in the same situation as Peruvians and that in no case can reliance be had on exceptions or diplomatic protection. However, within 50 kilometres of the Peruvian frontiers, foreigners may not acquire or possess under any title mines, lands, woodland, water supplies, fuel or sources of

energy, directly or indirectly, individually or in association, under pain of forfeiting the right thus acquired to the State.

21. On the other hand, the law authorises the conclusion of agreements with foreign investors and guarantees them the following rights:

(a) Stability of the taxation conditions ruling at the time when the agreement was concluded;

(b) Stability of the rule granting free disposability of foreign exchange;

(c) Stability of the right to non-discrimination laid down in article 2 of the Constitution (art. 12 of Statutory Decree No. 662).

Of course, the State guarantees foreign investors and enterprises equality of treatment with their Peruvian counterparts without any exceptions other than those laid down in the State Constitution and the Decree. It is also clearly stated that Peruvian law will not discriminate between investors or enterprises on the basis of national or foreign participation in the investments concerned. Another important standard is Statutory Decree No. 663 (29 August 1991) regulating the application of the "Programme of migration-investment", which is intended to facilitate the entry into Peru of foreigners who wish to bring in capital and invest in Peru.

22. Furthermore, an attempt is made to incorporate foreigners in the national productive system through the labour regulations. For example, Statutory Decree No. 689 (4 November 1991) or Act on the Employment of Foreign Labour prescribes that employers, whatever their activity or nationality, shall give preference to the recruitment of Peruvian workers (art. 1). Nevertheless, the engagement of foreign workers is permitted, subject to the labour conditions laid down for private activity and within the limits established by the law. The work contract and amendments to it must be authorised by the administrative authority for labour (art. 2). In the same way, within the total number of employees, workers and servants 20% of foreign personnel may be engaged by Peruvian or foreign enterprises, their remuneration not being allowed to exceed 30% of the total salaries and wages bill (art. 4).

23. It should be added that there is an Act No. 26174 dealing with the migration-investment programme, which is intended to facilitate the naturalisation of foreign subjects who wish to bring in capital or invest in Peru. This Act is designed to promote investments and technology transfer and to facilitate economic activities and the naturalisation of foreign citizens who desire to bring capital and investments into Peru.

24. As for constitutional guarantees, the Peruvian Constitution lays down procedures for obtaining writs of habeas corpus, amparo, habeas data and unconstitutionality in section V of the constitutional guarantees, and specifically in article 200. Additionally, and once internal legal remedies have been exhausted, anyone considered to have suffered impairment of rights laid down in the Constitution, among them non-discrimination, can have recourse to international tribunals or bodies set up according to treaties or agreements to which Peru is party (article 205 of the Constitution), among which may be mentioned the Organisation of American States, the Inter-American Court of Human

Rights, the Committee on Human Rights, the Committee for the Elimination of Racial Discrimination, etc.

25. Below are quoted the texts of these constitutional guarantees:

"Article 200. The following are constitutional guarantees:

1. Proceedings for habeas corpus in respect of an act or omission on the part of any authority, official or person that impairs individual freedom and related constitutional rights.

2. Actions of "amparo" taken in respect of an act or omission on the part of any authority, official or individual that impairs or threatens the other rights recognised in the Constitution. They are not taken in the case of legal provisions or court sentences resulting from regular proceedings.

3. Proceedings for unconstitutionality, which are taken in regard to regulations with the rank of laws: acts, statutory decrees, emergency decrees, treaties, congressional regulations, regional regulations of a general nature and municipal ordinances that contravene the Constitution in form or in substance

4. Popular proceedings, which are taken for infringement of the Constitution and the law through regulations, administrative orders and resolutions, and decrees of a general nature, whatever the authority from which they proceed.

5. Proceedings for failure to implement decisions taken against any authority or official unwilling to put into effect a provision of the law or an administrative order without prejudice to statutory liabilities.

6. Proceedings for habeas data which are taken in the case of an act or omission on the part of an authority, official or individual that impairs or threatens rights and which relates to article 2, paragraphs 5, 6 and 7 of the Constitution."

A commission has now been set up by the Democratic Constituent Congress with the task of revising article 200, paragraph 3.

26. It must be emphasised that the issuing of writs of habeas corpus and "amparo" is not suspended during periods when states of emergency and siege are declared, as referred to in article 137 of the Peruvian Constitution. Similarly in this regard, reference must be made to Act 23506 (7 December 1982), the Habeas Corpus and Amparo Act and Act 25398 (5 February 1992) and Decree Law number 25433 (11 April 1992) which amend and supplement it.

27. These regulations establish that the purpose of these warranty proceedings is to restore matters to the state in which they were before the violation or threat of violation of a constitutional right (art. 1). Likewise, it is pointed out that such warranty proceedings are taken in cases in which constitutional rights are violated or threatened by acts or omissions and acts of obligatory execution (art. 2). It should be emphasised that this Act recognises and

develops the possibility of appealing to an international jurisdiction, as laid down in the Peruvian Constitution (art. 39) and Act No. 23506.

28. An important point is that established by article 14 of Act 25398 which states that the rights protected by habeas corpus and "amparo" must be understood and interpreted within the general context of the Peruvian Constitution and the international human rights covenants ratified by Peru, the general principles of law and, preferably, those that inspire Peruvian law.

29. From all that has been said above it may be concluded that the importance of warranty proceedings, taken as a whole, lies in the fact that, through them, unrestricted respect for individual and/or collective freedom is ensured without distinction of any type between the inhabitants of Peru

Article 3 - Equality of rights between men and women

30. The purpose of this article is to protect women against discriminatory treatment based on their condition as women and to establish their right to enjoy all the rights laid down in the Covenant on equality of terms with men. This principle has been laid down in numerous examples of Peruvian legislation, in regulations of every type and at every level from the highest, such as the constitutions of 1979 and 1993, down to statutory orders and specific rules which will be discussed below.

31. In the constitutional sphere it should be mentioned that the 1993 Constitution recognises the right of every person to equality before the law. It stipulates that nobody shall suffer discrimination by reason of origin, race, sex, language, religion, opinion, economic status or any other condition (art. 2, para. 2). Other important provisions are Article 4, which states that the community and the State will afford special protection to children, adolescents, mothers and old people left on their own, whereas Article 23 for its part stipulates that work in its numerous varieties shall be the subject of priority attention from the State, which will give special protection to mothers, minors and people unfit to work.

32. Among the principles of labour relations, paragraph 1 of Article 26 recognises the principle of equality of opportunity without discrimination, emphasising the content of paragraph 3 of Article 42 of the 1979 Constitution, under which labour in its various forms is protected by the State without any discrimination and on terms of equality of treatment.

33. In the sphere of civil legislation it should be mentioned there has been an important development regarding the treatment of women, embodied in the 1984 Civil Code and different from the rule laid down in the 1936 Code, which gave unequal treatment for women and was in force until 13th November 1984.

34 In the 1984 legislation the discriminatory standards that were valid until then were annulled and replaced by the following:

> Article 4. Males and females shall have equal capacity to enjoy and *exercise civil rights*
>
> ...

Article 24. Women shall have the right to have their husband's name added to their own and to retain it when they contract a new marriage. This right shall not apply in case of divorce or nullity. In a case of physical separation the woman shall preserve her right to retain the name of her husband. In cases of dispute the courts shall decide.

...

Article 287. Spouses shall mutually undertake by the fact of their marriage to feed and educate their children.

...

Article 290. Both spouses shall have the duty and right to participate in the running of the home and to cooperate in improving it. It is the duty of both of them also to establish and take care of the conjugal home and to resolve questions related to the economics of the home.

Article 291, paragraph 1 - If one of the spouses devotes himself or herself to work in the home and the care of the children, the obligation to maintain the family shall lie with the other, without prejudice to the mutual aid and cooperation that the two spouses owe each other.

Article 292. The conjugal partnership is legally represented by both spouses jointly. Either can hand over authority to the other to represent the partnership totally or partly. For the ordinary necessities of the home and for acts of administration and preservation the conjugal partnership may be represented by either of the spouses.

...

Article 303. Each spouse is free to manage his or her own assets and may dispose of them or place a lien on them.

...

Article 305. If one of the spouses does not contribute with the fruits or revenue of his or her own assets to the upkeep of the home the other can require that they pass under his or her management wholly or in part.

...

Article 313. Management of their joint assets is a matter for both spouses. Either may authorise the other to take over sole management of all or some of the assets.

...

Article 315. The intervention of the husband and wife is essential for disposal of or taking a lien against the joint assets. It is not required in cases of acquisition of movable assets, which may be effected by one of the spouses acting alone."

35. On the other hand it should be emphasised that the 1984 Civil Code introduced an important modification relating to the equality of men and women in regard to both what is known as arbitration at law and so-called "arbitration of equity". In this instance reference must be made to the second paragraph of Article 551 of the Code of Civil Procedure which established that arbitrators must be appointed from among Peruvian or foreign males over 25 years of age in full exercise of their civil rights and who in addition must be professionally qualified if they have not been expressly designated as arbitrators of equity.

36. Article 1.916 of the 1984 Civil Code stipulated that friendly arrangers could be appointed from among Peruvian or foreign natural persons over 25 years of age who are in full exercise of their civil rights. In this way the Civil Code, in harmony with the provisions of Article 2, paragraph 2 of the 1979 Peruvian Constitution removed the obstacle which had without justification made it impossible for women to act as arbitrators.

37. Article 1.916 mentioned above was repealed when Act No. 25935 (the General Arbitration) Act came into force; article 20 of the Act reiterated the removal of the obstacle mentioned above. Indeed this instrument establishes in its first paragraph that natural persons, whether Peruvian or foreigners may act as arbitrators if they have reached their majority, possess full legal competence and are in full exercise of their civil rights. Consequently in this concrete respect the principle of equality of the sexes is maintained for the appointment of arbitrators.

38. As far as civil procedural legislation is concerned it should be noted that the Code of Civil Procedure which was in force up to 27 July 1993 contained various discriminatory rules against women in relation to their appearance in a judicial proceeding. Thus it was for the husband to represent the wife in legal proceedings, except in the cases laid down in Article 20 of the Act. A married woman could appear before the court without the need of the husband's intervention or of judicial authorization only if she was divorced, if the husband was the person with whom she was litigating, if the matter under discussion referred to actions or obligations arising from the industry or profession exercised publicly by the woman or to activities arising from the management by the wife of her paraphernalia or if the wife was before the court for eviction as a result of failure to pay the rent on the building she occupied when the husband was not on the spot (art. 22). Except in the cases referred to in all the other instances the wife needed the husband's authorization to appear before the courts or in his absence authorization from a judge (art. 23).

39. These rules, like the whole of the Code of Civil Procedure, were repealed on the entry into force of the new Code of Civil Procedure. This Code has established that the married couple may be represented by either of the spouses if they are the plaintiffs. On the other hand, if they are the respondents, they can be represented by both spouses. This is established by Article 65, relating to the procedural representation of autonomous assets.

40. Bearing in mind that the Civil Code establishes in Article 303 that each spouse retains freedom to manage his or her own property and can dispose of it or place a lien on it, procedural steps related to such assets will be initiated by the spouse who owns them.

41. An important area is that connected with commercial legislation, in regard to which it should be pointed out that paragraph 2 of the first invalidating provision of the Code of Civil Procedure that came into force on 28 July 1993 annulled Articles 6, 7, 8, 9, 10, 11, 12 and 21, paragraphs 7, 8 and 9 of the Commercial Code. All those articles laid down restrictions on the practice of commerce by a married woman. Thus, for example, a married woman over 16 years of age could engage in commerce, provided that she had the permission of her husband, acknowledged in a certified public instrument and registered in the Incorporation Register (art. 6). Notwithstanding the fact that it was presumed that the married woman engaged in commerce could be authorised to trade (art. 7), the husband could freely revoke the authority given (art. 8). In the case of a woman who at the time of marriage was engaged in commerce, and wished to continue, she had to have the authorization of her husband (art. 9). All the wife's property and the joint property of the married couple were under obligation in regard to the results of her management of her business (art. 10).

42. A married woman over 21 years of age who lives separately from her husband as a result of the granting of a divorce, or whose husband is under curatorship or absent and his place of residence not known, or who has been deprived of his civil rights may also engage in commercial activities (art. 11). In such cases the proceeds of trading are under obligation only as regards the woman's own property, or the property of the married couple that had been acquired with the same proceeds, the woman being able to alienate them or borrow against them (art. 12). Finally, the registration form of each trader or partnership had to show the husband's authorization of the exercise of commerce by his wife, the legal or judicial permission to administer her property by reason of the absence or legal incapacity of the husband, revocation of the authorization to trade and the dowry papers, marriage settlements and titles of ownership of the paraphernalia of the wives of the traders.

43. It is important to emphasise that the repeal of the articles referred to had been explicitly announced, even though they had been considered tacitly annulled since the entry into force of the 1979 Peruvian Constitution, which established equality between men and women. Nevertheless the texts of the rules quoted continued to be reproduced as if they were still in force, which from a formal point of view was not certain. In this way the clear intent to establish equality between the sexes in the legislation concerned with commercial arrangements was established by publicly putting on record the annulment of provisions that had wrongfully embodied discrimination.

44. It is important now to refer to present-day penal legislation, an area in which the most important change is a new penal code which, compared with its predecessor, the 1924 Penal Code, is decriminalising and non-punitive. Its provisions put to one side the punitive aspect of sentences and lay emphasis, like other modern bodies of law, on the aim of bringing the criminal back into society.

45. Within this framework of a modern penal policy, women indubitably have greater protection. Moreover, the disadvantage at which women have found themselves is gradually disappearing because more and more account is being taken of reality as the point of departure for every investigation made with a view to producing legal provisions with a penal content. It must be emphasised, however, that it is not a question of there having been no concern with reality before but that what is happening is that the prominence given to the role of

women in the last few years has meant that legal provisions have become more diligently drafted and more in accordance with the real conditions which they are supposed to regulate and apply to.

46. A clearcut example of the statement in the previous paragraph is the fact that in article 107 the unmarried male partner is considered as a passive subject of the crime of uxoricide. Without doubt, the outstanding fact is that this explicit mention arises from direct observation of what is encountered in an environment such as ours, which is like that found in many Spanish American countries, where cohabitation without marriage is ever more frequent. What is mentioned above was of course not found in the 1924 Penal Code.

47. Another laudable aspect of this Code and one directly connected with participation of women is that the harsh penalties often applied without sufficient justification have been replaced by the performance of community services. This has meant a significant step forward in the resocialising purpose of penalties. It is clear in this case that reference must be made to the presence of a considerable number of women in the penal centres of Peru.

48. There is also protection for women in the case of abortion without consent. Here the legislator has stipulated that if the woman concerned should die and the person performing the abortion could have foreseen that she would, he or she will be punished with greater severity. The Peruvian Penal Code has laid down penalties for desertion of pregnant women. Procuring is liable to greater penalties if the active and passive subjects of the offence are related, (there have been some cases in which husbands have exploited the immoral earnings received by women through the exercise of prostitution).

49. As can be seen, progress has been qualitative. This new code has opened the door to ever more effective protection of women under completely different arrangements from those that underlay the Penal Code that has been repealed, the principle being to insure that the rehabilitating purpose of the penalties becomes less and less an ideal and more and more a reality. Below a commentary is given on the main provisions contained in the penal code in regard to the legal position of women in Peru:

Article 107

A person who deliberately kills an ascendant or descendant whether natural or adoptive or his spouse or cohabitee shall incur a penalty of imprisonment for not less than 15 years. This article regulates what is generally known as the offence of parricide, which contains the concept of uxoricide, i.e. a case in which the woman specifically takes part as an active subject of the offence or its passive subject. If it is a case of a woman killing her husband or cohabitee, the penalty will be harsher because it is considered that such actions create greater risk, since in addition to destroying the life of the passive subject, they violate the elementary feeling of respect for close relatives.

Article 110

A mother who kills her child during the puerperium or under the influence of the puerperal period shall be punished with imprisonment of not less than 1 year or more than 4 years, or with the performance of from

52 to 104 days' community service. The offence is denominated as infanticide, the characteristic feature in this case being the fact that the mother can only be the active subject of the offence. In reality, how to deal with it is a matter of dispute since the article penalises precisely an agent who because of special circumstances is in a state of some imbalance, which for some makes punishment out of the question. Infanticide is becoming mitigated homicide because of the peculiar circumstances that lead to its commission. The mother must have intentionally killed her child when it is being or has just been born. The question of guilt does not arise.

Article 114

A woman who causes herself to abort, or realises that someone else is practising abortion shall be sentenced to imprisonment of not more than 2 years or the performance of community service for from 52 to 104 days. This is a question of self-abortion; as will be seen the pregnant woman is the only agent. Two cases are evoked: (a) the woman causes herself to abort; she is punished in this case for causing her own abortion by any means, and (b) the woman consents to the abortion being carried out by a third person.

Article 115

A person who causes an abortion with the consent of a pregnant woman shall be punished with imprisonment of not less than 1 year or not more than 4 years. If the death of the woman supervenes and the person performing the abortion could have foreseen that outcome the sentence shall not be less than 2 or more than 5 years. This is the case of what is known as abortion with consent. Here the person is punished who practises the abortion with the consent of the pregnant woman, unlike Article 114 under which the woman is punished who gives her consent. It is important to point out that consent must have been given by a free woman with legal capacity and such consent does not exculpate the active subject. The punishment is greater if the woman dies.

Article 116

A person who causes a woman to abort without her consent shall be punished with imprisonment of not less than 3 or more than 5 years. If the death of the woman supervenes and the person performing the abortion could have foreseen that outcome the sentence shall not be less than 5 or more than 10 years. In this article the punishment is given for an offence known as abortion without consent. The essential point in this case is the lack of consent on the part of the pregnant woman. Two situations arise here: (a) the woman is not aware of the intentions of the person performing the abortion, who makes use of this or of her naiveté to make her abort and, (b) physical violence is employed against her in order to carry out the abortion. Once again the death of the woman constitutes an aggravating factor.

Article 119

Abortion carried out by a doctor with the consent of the pregnant woman or of her legal representative, shall not be punishable if it was practised when it was the only way of saving the life of the pregnant woman or avoiding serious and permanent damage to her health. It is considered to be a therapeutic abortion. Curiously, the Code in this article does not lay down penalties. This is because of the raison d'être of this provision in which the mother takes a fundamental part. Indeed, it is the mother who will decide finally between safeguarding her life and her desire to confront all the risks inherent in a dangerous pregnancy. This means that the doctor who practises the abortion where there is no other means of saving the mother's life or avoiding serious or permanent damage to her health will not be penalised.

Article 144

A woman who feigns pregnancy or childbirth to give to a supposed child rights that do not belong to it, shall be punished by imprisonment of not less than one or more than five years. The same period of imprisonment and in addition prohibition to practise for between one and three years under article 36 paragraph 4 will apply to the doctor or midwife who co-operates in the commission of the offence. It is the offence of feigning pregnancy or childbirth that is in question here. Undoubtedly it is a wilful wrong, i.e. committed intentionally by a woman who is the active subject. This offence is committed when there is feigning of a pregnancy or a childbirth. In this last case it is necessary that the child should really exist otherwise this provision will not apply. A very poignant case is that of the widow who deliberately claims an inheritance from her dead spouse through a suppositious child and also the case of a woman who seeks by every means to bring a man under her influence by making him believe that the child born was his.

Article 150

A person who deserts a pregnant woman or a woman who has been pregnant and who is in a critical situation shall be punished with imprisonment of not less than six months or more than four years and with 60 to 90 days fine. The crime is desertion of a pregnant woman; here a single or married woman and the embryo or foetus are the passive subjects of the offence. The essential thing is to emphasise that the protection given by the law is based on assistance that is owing to a woman who has been pregnant and deserted in a critical situation which imperils her safety and the safety of what she is carrying in her womb.

Article 179, paragraph 4

A person who promotes or fosters prostitution of another person shall be punished by imprisonment for not less than two or more than five years. The period shall be not less than four or more than twelve years if (paragraph 4) the committer of the offence is related within the fourth degree of consanguinity or the second degree of affinity or is the spouse, cohabitee, adopter, tutor or curator or has the victim in his or her care for any reason. The offence is procuration: here the purpose of the

procurer, who may be male or female, is to promote prostitution of another person to satisfy the sexual desires of others. In the case in question, paragraph 4, the fact of being the spouse of the victim, is an aggravating circumstance.

Article 180

A person who exploits the immoral earnings of a person exercising prostitution shall be punished with imprisonment for not less than three or more than eight years. If the victim is under 14 years of age or the spouse, cohabitee, descendant, adoptive child, spouse's child, or cohabitee's child, or if the victim is in his or her care, the punishment shall be not less than four and not more than twelve years. The offence is known as procuration. It occurs in this case that the earnings a woman obtains by the exercise of prostitution are taken over by a person known as a pimp and living parasitically on such earnings. In quite a few cases pimps are husbands who take advantage of and exploit the practice of prostitution by their wives.

Article 181, paragraph 3

Anyone who imperils, seduces or abducts a person to deliver to another with a view to practising sexual relations or a person who hands that person over for that purpose shall be punished with imprisonment for not less than two and not more than five years. The penalty shall be not less than five years or more than twelve years when (para. 3) the victim is the spouse, cohabitee, descendant, adoptive child, spouse's child or cohabitee's child, or in the offender's care. This article refers to the prostitution of persons and a woman may be the active or passive subject of the offence. Paragraph 3 presupposes that the victim is a woman in the case in question and increases the penalty for the person concerned if the two are related.

Article 182

A person who promotes or facilitates the entry into or departure from a country or transfer within Peru of another person for the exercise of prostitution shall be liable to imprisonment for not less than five or more than ten years. The penalty shall be not less than eight or more than twelve years if any of the aggravating circumstances listed in the previous article is present. The offence here is known as traffic in persons; the woman in this case can be the object of the traffic and the purpose is to protect her with or without her consent, accusing whoever favours her entry, departure or transfer within Peru to exercise prostitution, the penalty being greater if the victim is related to the person carrying out this act of white slavery.

Article 208, paragraph 1

There shall be no punishment (without prejudice to civil compensation) for thefts, misappropriations, frauds and damage caused by spouses, cohabitees, ascendants, descendants and direct relatives. This is another provision that does not indicate the offence committed but on the contrary lays down grounds for absolving the person committing it: a

woman who commits theft, misappropriation, fraud or damage against her spouse shall not be punished with imprisonment but may be liable to pay civil compensation where the case arises. The penal law, therefore, does not wish to apply the severity involved in penal sanctions to a wife so as not to create a greater stigma that would cause still further deterioration in family relationships.

Article 442

Anybody who deliberately ill-treats another person without causing injury shall be punished with performance of community service for from ten to twenty days. If the person concerned is a spouse or cohabitee the penalty shall be community service for twenty to thirty days, and thirty to sixty days' fine. This is a case of ill-treatment without injury. Here a woman who ill-treats her spouse or cohabiting partner but without causing any injury will be punished, not for having committed an offence but, for infringing the rights of the person. For this same reason, the penalty is community service or thirty to sixty days' fine.

50. In the field of administrative legislation, mention may be made in the first place of the existence of Supreme Decision No. 183-94-PCM, approving the statutory regulations issued for the Budgetary Programme for Targeting Basic Social Expenditure. The purpose of this programme is to promote equality of opportunity for all the inhabitants of the country, giving priority to selective and targeted intervention in favour of the sectors most in need and improving the quality of coverage and efficiency in basic social expenditure. Expenditure of a social nature is considered to be expenditure for providing basic preventive health services, primary and secondary education and basic and supplementary justice.

51. For putting into effect the provisions of the regulations, a sectoral affairs co-ordination unit has been set up consisting of representatives of the Ministry of Health, the Ministry of Education and the Ministry of Justice and will co-ordinate and issue directives for the conduct of the programme mentioned. Therefore, execution of the programme to the extent that it can improve co-ordination for the treatment and protection of women in certain situations connected with health, as is the case with the protection of pregnant women or the development of a programme in favour of breast feeding, is of special importance and must be considered as an example of the treatment which is now being given to women, not only in the legislative and political fields but also in the field of application and effective development of programmes in favour of women.

52. On the other hand it should be mentioned that at the moment Bill No. 1849-94 is being discussed by the Commission of Human Rights, Defence and Internal Order of the Democratic Constituent Congress. The Bill is intended to repeal the Supreme Decrees 010-93-IN and 002-94-IN. The first of these decrees leaves in suspense the situation of junior personnel on secondment and civilian health employees of the Peruvian National Police and repeals various legal provisions, among them one that incorporated officials and juniors on secondment in the civilian health staff of the National Peruvian Police and another which assigned the rank of Acting Lieutenant and other prerogatives to persons graduating from public health training schools of the Peruvian National Police (treating them as public servants). The second supreme decree lays down

provisions for the appointment of nursing and clinical laboratory professionals graduating from the professional training centre of the SPNP, for which purpose it authorises the national police to designate these nursing and clinical laboratory staff as civilian employees under the same conditions as health professionals.

53. These regulations basically affect female staff: nursing professionals and clinical laboratory technicians. Both decrees, it is thought, are in breach of the constitutional principle of non-discrimination on grounds of sex by depriving of police status the female health staff of the police forces and depriving them of advancement, honours, remuneration and pensions that are provided for the rest of the staff. By virtue of this it can be anticipated that no major objections will be raised in the proceedings and that it is highly probable that the supreme decrees referred to will be repealed as discriminating against women. Furthermore, in the field of administrative legislation no additional provisions have been found that would establish discrimination either favourable or unfavourable to women.

54. The first general finding related to legal provisions applicable to the whole of administrative proceedings is the Act on General Standards of Administrative Procedure in which there is no reference at all to the sex of the user or citizens who engage in an administrative procedure. The formulation of the articles in this case is totally neutral and it should obviously be understood that it is based on its application to both men and women.

55. It should also be noted that this is based on the consideration that in respect of the whole of administrative legislation there are a huge number of provisions of varying importance, among which are the unified texts of administrative procedures (TUPAS) (provided for in Statutory Decree No. 757, Act for the Promotion of Private Investment) which contain or were designed to contain all the administrative procedures to be followed before the State body concerned. This large number of provisions obviously makes it materially difficult to carry out a total analysis of the whole set of administrative regulations. It suffices for this to mention that before the promulgation of Statutory Decree No. 757 special studies had been carried out that brought to light and referred to the existence of approximately 80 000 administrative procedures contained in a equal number of legal regulations at various levels of importance. It imposes great limitations on pinpointing regulations, despite which a review of representative texts has not revealed a single text referring to women other than those previously mentioned.

56. In the field of labour legislation it is noteworthy that, since promulgation of Act No. 2851 "Work of children and women for a third party", legislation has been enacted in favour of women, thus providing them with certain benefits. Below are described the regulations at present in force that deal with female labour.

Compensation

57. This concept includes both compensation for accidents at work and compensation for wrongful dismissal. In the first instance it is laid down that if the victim of an accident at work is a woman, compensation shall be equivalent to 25% (art. 9 of Act No. 2851). In the second case, that is to say, compensation for unjustified dismissal, women have been granted an additional

benefit in that the employer must add salary or wages for two months to the total sum of her social security benefits. This is provided for in the last part of the single article of Act No. 4239 of 26 March 1921 which is amended by Act No. 2851.

58. In addition, if a woman is dismissed, no matter whether the dismissal is justified or not and is within three months before or after childbirth, the employer must provide compensation equal to 90 days' pay without prejudice to any compensation provided for in the work contract (art. 18 of Act No. 2851). On the other hand, if the woman is on piecework and does not have the time that the law envisages to nurse her child, the employer shall pay her compensation based on the last month, dividing by the number of days' work done the total sum that during that time she has received as wages, including bonuses and any other remuneration given by reason of this same work (articles 22 and 27 of the Supreme Decree of 25 June 1921).

The working day

59. Women must not work more than eight hours a day or forty-five hours a week (art. 5 of Act No. 2851), whereas the normal working week of men is 48 hours (art. 25 of the Peruvian Constitution of 1993). An exclusive benefit included in the working week is that of having two continuous hours rest in the middle of the day (art. 8 of Act No. 2851).

60. In the sole case of establishments where work continues on Saturday afternoon their women workers are given Monday off if it is not a holiday. For that purpose the work on Saturday must begin at two in the afternoon and not exceed 5 hours, the day's wages being equal to the ordinary day's wages (art. 11 of Act No. 2851, amended by the single article of Act No. 4239).

Pregnant women

61. Article 45 of the 1979 Peruvian Constitution described the protection that must be given to working mothers. This same note was struck in the 1993 Constitution of Peru, which declares in article 23 that the State shall give special protection to mothers. Women who are pregnant are entitled to 90 days' leave, 45 days before the birth and 45 days after it which, as an exception, will be reckoned as actual days' work and hence cannot be deducted from length of service. In the same way they will be reckoned as actual days of work when holiday entitlements are calculated.

62. This maternity leave must begin when the physician so declares (art. 14 of Act No. 2851, amended by art. 28 of Act No. 22482 in accordance with Statutory Decrees Nos. 650 and 713, articles 8 and 12, respectively). It must be understood therefore, that, during the period referred to, the work contract will be suspended and will continue to be so during the days of pre-natal and post-natal leave (art. 48, para. (c) of Statutory Decree No. 728).

63. Under Decree Law No. 22482 social security coverage has been extended. Two types of insured persons are to be considered for the purpose: those compulsorily assured and those whose insurance is optional. Among the former are those who depend on an employer, whether undertaking public or private activities (art. 2, para a). A woman employee or worker will receive the

benefits conferred by this law as an obligatorily insured person. These benefits are the maternity and breast-feeding allowance which are paid in cash.

64. During the 90 days' pre-natal and post-natal leave the employer will be obliged to pay the maternity benefit already referred to. This will be paid from 45 days before childbirth to 45 days after it, on condition that the insured woman abstains from all paid work (art. 28, Decree Law No. 22482). The benefit will be paid provided that the insured person has made at least three consecutive monthly contributions or four non-consecutive monthly contributions in the course of the six months preceding the probable date of birth and has been registered with the Peruvian Institute of Social Security (IPSS) for at least 9 months before the probable date of birth, except in proven cases of prematurity (art. 19, of Decree Law No. 22482).

65. The amount of the daily maternity benefit is equal to the average assurable remuneration per day in the four calendar months preceding first receipt of the maternity benefit. If the contributory months add up to less than four, the average will be determined on the basis of the total contributory months (art. 29 of Decree Law No. 22482). The benefit will be paid directly by the employer, who will recover the money later from the IPSS (Supreme Decree No. 029-84-PM and Agreement of the IPSS Directorate No. 2, Ordinary Session of 23 August 1984).

66. The IPSS grants to the mother, or whoever takes charge of the child if the mother has died, an infant-feeding benefit for each child of the insured person. This benefit will be paid in milk tokens or in cash until the child has reached the age of eight months. The value of the grant will be 25% of one thirtieth of the minimum living wage per month laid down for metropolitan Lima. This grant will still be payable if the mother is doing some paid work (articles 22 and 30 of Decree Law No. 22482 and Supreme Decree No. 029-84-PM).

67. The right of the mother to apply for cash payments of both maternity benefit and baby-feeding benefit lapses six months after the date at which the benefit is payable for each grant, 90 days in the case of the maternity benefit and when the baby is 8 months old in the case of the baby-feeding grant (art. 40 of Decree Law No. 22482).

68. When applying for the maternity benefit the insured person must submit a medical certificate certifying the probable date of childbirth and a medical certificate saying that the birth has taken place (art. 90 of Supreme Decree No. 08-08-TR). Also, in order to obtain the infant-feeding grant, documents certifying her right, the date of birth and a declaration of the survival of the newborn baby must be submitted (art. 80 of Supreme Decree No. 08-08-TR).

69. An additional benefit, and perhaps one of the most significant in regard to working mothers, is that of the crèche room provided for in articles 20 and 21 of Act No. 2851. To achieve this end employers must make available, either in their own premises or in others near the workplace, a room specially fitted out to receive and look after children of working women during working hours, but only during the first year of age of the children. Employers must have such crèche rooms available if they have working for them more than 25 female employees or workers aged over 18 years (art. 26, Supreme Decree of 25 June 1921).

70. In addition, mothers who have children in these crèches must be given time for feeding them which in aggregate must not exceed one hour per day. The time it takes for the mother to reach the premises of the crèche will not be counted. The value of this time must not be deducted from the wages of the mother whatever the form in which she is paid for her work.

71. In regard to pregnant women, a provision has also been made that if a pregnant woman is dismissed by her employer solely for her being pregnant, she shall be entitled to seek in the courts a declaration that her dismissal is null and void and if the court rules in her favour she will be re-instated in her post immediately. It should be indicated that this declaration of nullity will be valid only if the dismissal is within the 90 days before or following childbirth (art. 65, paragraphs (e) and Art. 71 of Legislative Decree 728).

Retirement

72. Decree Law No. 19990, which regulates the national system of pensions in Peru, establishes the right of a woman to retire on reaching 55 years of age. The same applies to men when they reach 60 years of age. On the other hand, Decree Law No. 20530 on the regulations for pensions and compensation for civilian services to the State, not covered by Decree Law No. 19990, stipulates in its article 4 that a worker acquires rights to a pension on completing 15 years of real and remunerated service in the case of a male and 12 and a half years in the case of a female. Similarly article 5 of that Decree Law stipulates that redundancy payments and survival pensions will be regulated on the basis of a maximum period of service of 30 years for men and 25 years for women.

73. According to the provisions of articles 52, para (f) and 57 of Statutory Decree No. 728 a woman must compulsorily retire when she reaches the age of 60 years, a man must take compulsory retirement when he reaches the age of 65. All this applies only if the number of contributions sufficient to reach the maximum pension granted by the IPSS have been paid.

74. It should be pointed out that Decree Law No. 25897, referring to the private system of administration of pension funds (SPP), indicates in its article 5 that participants in pension systems administered by the IPSS can opt to remain in them with all the rights and benefits inherent in them or may join the private pension system. If they join the private pension system their transfer to it is reversible within the two subsequent years under the provisions of the Decree Law already mentioned, providing that they are over 55 years of age in the case of men and over 50 in the case of women.

Prohibitions

75. Article 6 of Act No. 2851 provides that female minors (i.e. women under 18 years of age) are forbidden to undertake night work (from 8pm to 7am). It should be pointed out that in Peruvian legislation night work is generally considered as work carried out between 10pm and 5am; this is the definition in article 2 paragraph 1 of the Night Work (Women) Conventions Nos. 41 and 42 of the International Labour Organisation (ILO) and ratified by Peru through Statutory Order No. 10195. Nevertheless, as far as women's work is concerned, the working hours mentioned in the first sentence can be adopted as being much more advantageous to women.

76. Similarly, women minors are forbidden to work on Sundays and civil holidays in the following occupations:

(a) those carried out in the family without collaboration of persons outside the family and under the authority and supervision of parents or tutors;

(b) domestic service occupations;

(c) agricultural occupations, if machinery is not used.

77. It is also forbidden for female minors to work in the following occupations (articles 19 and 20 of Supreme Decree of 25 June 1921):

(a) newspaper-selling;

(b) selling of magazines and lottery tickets;

(c) shoe-shining;

(d) distribution of programmes and leaflets;

(e) sale of flowers and confectionery, and

(f) all the other ambulatory occupations exercised in the public streets except for those carried on in kiosks and at fixed posts.

78. Both article 12 of Act No. 2851 and article 17 of the Supreme Decree of 25 June 1921 forbid women to carry out work underground and mining and quarry work. In addition they may not:

(a) clean machines and engines in movement;

(b) carry out building repairs, cleaning and painting, if scaffolding has to be used and the work is carried out at a height greater than 10 metres above the ground;

(c) loading and unloading of ships or work involving cranes and hoists, when heavy weights are concerned;

(d) metal smelting;

(e) the use of circular saws;

(f) the making, use and transport of inflammable, explosive or toxic materials;

(g) any work in premises or on sites where explosive, inflammable or caustic substances are made, handled or stored in dangerous quantities and where toxic dusts and vapours irritating and harmful to health are given off.

Under article 12 of the Act, all those other occupations must be added which, in the opinion of the executive authorities, are dangerous for health and morality.

The rules referring to prohibition of women working underground and in mines must be in line with ILO Convention No. 45: "Underground Work (Women) Convention" ratified by Peru in Statutory Order No. 10195.

Other benefits and duties

79. Below we describe important benefits to which Peruvian women are entitled.

80. Employers are obliged to supply seats that will enable women to work comfortably, and said seats must be different from those provided for the public (art. 19 of Act No. 2851). Women who do sewing at home must receive wages at least equal to those earned per legal working day by similar workers in factories. If the work is paid for by the piece the legal working day must produce the same wages (art. 28 of Act No. 2851).

81. There exists a public right of action against those who infringe Act No. 2851, regulating the work of women for third parties. All the institutions for protection of mothers have the authority to take public action (art. 30 of Act No. 2851). Institutions and authorities in the provinces are given the task of supervising the strict fulfilment of the rules in favour of women. If this is not done, the supreme political authority in the province, the judge of the first instance or the mayor can order a stoppage of the work concerned if a medical examination proves that it is harmful to the health of women (art. 71 of Act No. 2851).

82. Any honour, degree, professional title, post, public function, duty, employment or other occupational or working activity whatever its origin or level shall be given a name in the feminine gender where women are involved, if this is possible grammatically (Act No. 24310).

83. The law recognises the situation of domestic workers who are protected by Supreme Decree No. 23-DT of 30 April 1957. Similarly, under Supreme Decree No. 002-70-TR they are recognised as having the right to holidays, pay commensurate with the hours they work and a minimum period of rest at night.

84. The Ministry of Labour and Social Welfare must institute periodically special employment programmes for different classes of labour. Those that can benefit from such programmes include women with family responsibilities with no limit of age. For this purpose it is considered that women with family responsibilities are those, no matter what their age and civil status, who have family duties and are available to work part time or for set periods. In such cases the programmes must take into consideration the time available to the workers, their degree of qualification, their socio-economic conditions at home and their suitability the jobs designated by the enterprises in view of the fluctuations of demand in the market (art. 131, paragraph (a) and art. 134 of Statutory Decree No. 728).

85. Women workers, women employees and women in other categories subject to the rules governing work in the private sector have a right to a bonus of 25% on completing 25 years' service with the same employer. On completion of 30 years' service the bonus will increase to 30% of the wages they receive (Act No. 24504). However, the third transitory and final provision of Statutory Decree No. 688 has eliminated the 25-year service bonus for women employees and

workers whose work contracts were issued when the Statutory Decree in question was in force.

86. The law considers that a telephone operator in general, in whatever enterprise, company or office she provides her services, shall be considered as a commercial employee and therefore cannot be considered as a worker (Supreme Decree of 17 May 1929).

87. A person working at home, i.e. carrying out work in her own household will be granted a maternity allowance and an infant-feeding allowance and is covered by the national system of pensions set forth in Decree Law No. 19990 and in the health services provisions of Act No. 22482 (art. 164 of Decree Law No. 728).

88. Women who are authorised to work nights in hotels, bars and canteens as chambermaids must be provided with a special permit which will be supplied free of charge by the General Labour Inspectorate of the Ministry of Labour (Supreme Decree of 9 December 1930).

89. The State will ensure fulfilment of the provisions relating to women's work by carrying out periodic inspections of workplaces and thus determining whether the law is being faithfully complied with (Supreme Decree of 17 January 1936).

90. The law confers on housewives and mothers of a family the status of independent worker (Act No. 24705).

91. It is worth pointing out that Peru ratified in 1986 through Statutory Order No. 24508, ILO Convention No. 153 on equality of opportunity and treatment for men and women workers and workers with family responsibilities, adopted by ILO in 1981. Peru has also ratified through Statutory Order No. 13284, the ILO Equality of Remuneration Convention (No. 100). Finally, Decree Law No. 17687 ratified ILO Convention No. 111; known as the Discrimination (Employment and Occupation) Convention.

92. One of the most important legislative texts concerned with the protection of women is Act No. 26260, which approves regulations on State and public policy regarding domestic violence. Whereas the scope of the Act and its concept of "manifestations of domestic violence" are sufficiently general and explicit to cover all acts of physical and psychological ill-treatment between spouses, cohabitees or other persons, it must be understood that to a great extent it responds to the need that has arisen in face of ill-treatment and beatings by husbands.

93. To ensure fulfilment of the Act's objective, i.e. to eliminate domestic violence, it has become possible to take a number of different measures, among them the strengthening of ethical values and respect for the dignity of the person and rights of women, on the basis of school and extra-mural training; to conduct campaigns to publicise women's rights; to establish legal mechanisms for the victims of domestic violence; to set up local "women's police stations" in the geographical areas where it is most necessary; and to promote the establishment of temporary places of refuge to shelter the victims of violence, etc.

94. With a view to intervening against acts of domestic violence, the Act explicitly stipulates that the national police, the Office of the Public Prosecuter and the judicial authorities are the competent bodies. As to the intervention of the police, it is stipulated that they will preferably be the ones to receive reports of violence against women and investigate them. To do this it forms or cards have been issued enabling women who are victims of violence to set down their complaints without major difficulties or complexity (which is often the reason for many women being reluctant to make complaints about this type of behaviour).

95. Finally, the Act lays down rules to govern the proceedings taken by the judicial authorities in civil and penal cases arising from acts of violence against women. To do this their functional competence is clearly defined, as are those authorised to request the protection of the law and the precautionary measures that magistrates are entitled to demand.

Minors' Code

96. Another important regulatory text is the Minors' Code approved in Decree Law No. 26102, which has led to considerable improvement in the protection of minors and special progress in the protection of women, as will be seen below. Indeed, this text and specifically article V of its preliminary title explicitly recognises that the obligation to care for children and adolescents extends to mothers and their families. This means that the obligation of the State to promote the integrated development of minors by providing all the facilities and supplying all the means of care possible should not be understood in a restrictive manner, without considering or taking into account the minor's mother and family.

97. But it is not only this that is considered as a characteristic of the Minors' Code in regard to care for women. For example, article 2 specifically mentions that the obligations of the State necessarily imply protection and assistance for mothers before, during and after childbirth and with all the greater care when the mother is an adolescent.

98. Throughout this text therefore it is possible to find provisions that show that women are not legally unprotected. The provisions that specifically refer to women in the Minors' Code are as follows:

Article V of the Preliminary Title

This Code recognises that the obligation to care for children and adolescents also covers their mothers and their families. This provision constitutes the centrepoint of protection for women. This text can be understood as meaning that all care provided for minors extends also to their mothers and to their families. The beneficial nature of the Code is made obvious here by its rejection of any restrictive interpretation.

Article 2 - Care for mothers

It is the responsibility of the State to guarantee and the responsibility of society to help it in so doing, the establishment of suitable conditions for care during pregnancy, childbirth and the post-natal period by providing specialised care for adolescent mothers and

guaranteeing maternal feeding of the child and the establishment of day-care centres. It is established here that care will be given to pregnant women before, during and after childbirth. It is important to emphasise that while the State bears the responsibility for guaranteeing the establishment of suitable conditions for the care of pregnant women, society as a whole must also give its help to achieve this end.

Article 101 - Definition of maintenance

Maintenance is considered to be what is necessary for the upkeep, housing, clothing, education, training and vocational training, medical care and recreation of children or adolescents. Also considered as maintenance are the cost of the pregnancy from conception until the postpartum period. This article sets forth in appropriate fashion a definition of maintenance that amends the content of Article 472 of the Civil Code. Also considered as maintenance are all the costs of the pregnancy to the mother from conception to childbirth. This is one of the regulations that best shows the protective tendency of this Code with regard to women.

99. Now that the legal framework that protects women in Peru has been described it is important to provide some data that give an understanding of the real situation of women in that country. It may be pointed out here that the female population in Peru numbers 11,091,981, which represents 50.3% of the total population which, according to the 1993 census, was 22,048,356. Of these women, 7,852,110 or 70% live in urban areas.

Participation of women in politics

100. While the women in positions of power continue to be a minority, some important changes have been recorded that indicate a general greater acceptance of feminine leadership and a greater willingness among women to compete, which would seem to indicate a certain redefinition of women's roles in regard to political authority.

Right to vote

101. At the beginning of the 80s, under the terms of the new Constitution, the vote was extended to illiterate people and the right to vote was granted at 18 years of age. As a result the electoral register includes over 500,000 illiterate women and about as many young women.

Participation in parliamentary assemblies (annex 1)***

102. In the 80s there was a bicameral parliamentary system. Women candidates and women members of the Senate and Chamber of Deputies were a very small proportion at the beginning and the end of the period. In 1990 women elected as Senators represented 6.7% and those elected as Deputies 5.6% of the total. Fairly similar proportions were found in the 1980 elections.

*** This document may be consulted in its original language in the files of the United Nations Centre for Human Rights.

103. In 1992, when parliament had come to an end, the Democratic Constituent Assembly with 80 members was established. On this occasion, while the proportion of women candidates showed no increase as compared with previous elections, the proportion of women elected rose to 8.8%. Of the 7 women members of Congress, 5 belong to the government party.

Participation in the Civil Service (annex 2***)

104. Women in senior management posts in the Civil Service were in a minority as compared with men but their proportion gradually increased in the 80s and, presumably, in the 90s also. In 1987 for the first time two women became ministers of State with the portfolios of education and health. In 1990 the Ministry of Education was again allotted to a woman and in 1994 the same happened with the Ministry of Industry, Tourism and Integration and recently the Office of the Presidency. Between 1983 and 1987-1988 a certain increase occurred in the proportion of women holding posts of directors-general and senior directors.

105. In the process of restructuring the State apparatus that is going on it is interesting to note the increasing importance of professional qualifications for promotion in the Civil Service and the consequent advancement of professional women. An example of this can be seen in the considerable proportion of women in the national tax administration (SUNAT), an institution that has been modernised in the last few years and in which about 40% of the executives and 47% of the professionals are women (annex 3***).

106. In the 80s, municipal affairs became an arena for women's participation and organisation. This was observed mainly in 1984, when the Frente de Izquierda Unida gained control of the Provincial Council of Lima and the number of women among the councillors increased from 4 to 7. The municipal programmes for assistance to the urban poor favoured women's organisations and a new women's leadership took shape and found space for itself in the social and political arena (annex 4***).

The political parties

107. At the present time two women occupy high posts in two important parties (the Peruvian APRA party and the Christian Peoples' Party) and a woman is National Deputy-Director of the Democratic Movement of the Left. During the decade women's role in this type of organisation was a minority one. The relative improvement in women's position has occurred against a background of some renewal in certain party groups obliged to reorganise their institutions in face of the defeats they suffered at the end of the 80s.

Professional associations

108. Against a background of institutional crisis the professional associations have become a relatively important means of civic participation. As a result of progress in the professionalisation of women, the number belonging to these organisations has increased and has succeeded in changing the sex composition of a significant number of associations. In line with the diversification of their field of professional action, up to 1990 women already made up 40% of the membership of the accountants' association and between 20 and 25% of the members of the medical, legal, dentists' and architects' associations. Compared with

1993 an increase has been observed in those occupations which had been traditionally masculine (annex 5***).

Mechanisms to promote the advancement of women

109. There have been and still are authorities, organisations and programmes run by the State, organisations for international co-operation and non-governmental development associations which have directly or indirectly tended to promote the advancement of women, particularly in the last decade. State actions in this field have been mainly directed to caring for the basic necessities of women of small means as mothers of families. Priority therefore has been given to food programmes.

110. The growth in women's grassroots organisations and their penetration into public life are considered to be an indirect consequence of this activity. There has been increased participation of international assistance bodies in the provision of economic resources and technical advice. Thus, while State participation decreased, there was an increase in international co-operation through churches, non-governmental development organisations and grass-roots social organisations. In this respect reference should be made to annex 6***, which describes the most important of these mechanisms.

Article 4 - Measures derogating from the obligations under the Covenant

111. Peruvian legal procedures regulate the cases of exception to Article 137 of the 1993 Constitution by stipulating that the President of the Republic, in agreement with the Council of Ministers, may decree a state of emergency or a state of siege for a definite period throughout the national territory or in part of it, reporting on what has been done to Congress or the Permanent Commission.

112. A state of emergency is declared in face of disturbances of internal peace and order, disasters, or serious circumstances that affect the life of the nation. Once it has been declared, the exercise of constitutional rights relating to personal freedom and safety, the inviolability of domicile and freedom of assembly and movement in Peru laid down in the chapter concerned with the fundamental rights of the person may be restricted or suspended. Under these conditions, imposing a sentence of exile is forbidden. A state of emergency must not exceed 60 days, although it can be prolonged for another 60 days, said extension requiring, like the declaration of the state of emergency, the adoption of a Supreme Decree.

113. As for a state of siege, it is decreed in case of an invasion of Peruvian territory, an external war, civil war or an imminent danger. It is an important requirement for the establishment of the state of siege that it should indicate the fundamental rights whose exercise is not restricted or suspended. The duration of a state of siege must not exceed 45 days. As for the possibility of extending this period, the duration of such extensions is not indicated. It is merely stipulated that if a state of siege is adopted it must be approved by Congress, which, once it has been adopted, meets with full powers.

114. On the other hand it is important to mention that the government of Peru it punctiliously complying with its international obligations to notify states of emergency and the suspension of guarantees to the competent bodies of the

United Nations and the Organisation of American States. For this purpose the Peruvian Ministry of Foreign Affairs, through its accredited representatives abroad, maintains a constant channel of communications with the United Nations and the OAS to which every quarter the texts of the Presidential Decrees declaring states of emergency temporarily in certain areas of the country and suspending some of the guarantees laid down in the Constitution are sent.

115. Thus, in April this year, the adoption of Presidential Decree No. 023-93 of 28 March 1994 and the text of connected statutory orders recently issued were reported. Emphasis must also be laid on some of the communications made by the permanent representatives of Peru to the Secretariat of the American States and Executive Secretariat of the Inter-American Human Rights Commission:

(a) Note No. 7-5-M/057, dated 19 February 1993 in Washington DC, attaching the Bulletin on Subversive Affairs, issue no. 10, which contains periodic information from different press media on some of the terrorist activities that have occurred in Peru and the work being done by the Peruvian government to combat the violence generated by terrorist groups operating in the country.

(b) Note No. 7-5-M/271, dated 10 August 1993 in Washington DC, giving information on the national legislation in force on the crimes of terrorism and treason and referring to the process of pacification in Peru.

(c) Note No. 7-5-M/314, dated 21 September 1993 in Washington DC, bringing to the attention of the recipient the agreement signed at the 19th General Conference of the Inter-Parliamentary Union held in Canberra, Australia, and reiterating an energetic condemnation of the terrorist groups Sendero luminoso and the MRTA.

(d) Note No. 7-5-M/322, dated 19 October 1993 in Washington DC, communicating the submission made in September by the Minister of Industries and the Chairman of the Council of Ministers which submits for consideration by the Constituent Congress a bill to modify application for official review by the Supreme Council of Military Justice in the case of a flagrant judicial error and repealing the restriction on the right of defence, restoring habeas corpus protection in proceedings for terrorist crimes and repealing Decree Law No. 25728 on sentences in absentia in cases of terrorism and treason.

(e) Note No. 7-5-M/370, dated 11 November 1993, Washington, DC, publicising the Declaration of the Rio Group in which the Heads of State and governments reaffirm their condemnation of terrorism, stating that it constitutes systematic and deliberate violation of human rights, militating against the stability of the democratic system, and urging the international community to maintain a solid front and to co-operate in the eradication of this scourge.

(f) Note No. 7-5-M/404, dated 6 December 1993, Washington DC, attaching a copy of the text of Act No. 26248 published in El Peruano of 25 November 1993 with amendments to the bill of the Ministry of Industry and the Chairman of the Council of Ministers.

(g) Note No. 7-5-M/405, dated 6 December 1993, Washington DC, giving information on the educational work being carried out by the Peruvian government on the theme of human rights as part of the process of national pacification. It also attaches the programme of the course on human rights given to officers, non-commissioned officers and other ranks of the armed forces and national police serving in zones where a state of emergency has been declared. Also attached is the "Ten Commandments of the Armed Forces", which had been distributed to all military and police units.

116. In this way the government of Peru is meeting its international obligations to communicate to the international community promptly and effectively the legal regulations in force and every fact, information or event concerned with Peru.

Article 5 - Prohibition on restrictive interpretations of the Covenant

117. This article describes two mechanisms for safeguarding the provisions of the Covenant. Thus the first paragraph of the article mentions the need to set up mechanisms that make any erroneous interpretation of the Covenant's provisions impossible, so that it cannot be used by any person, group or government to carry out acts that might abolish or restrict the rights laid down therein or introduce restrictions going beyond those stated in the Covenant.

118. In this connection, it is important to remark that both in the 1979 Constitution (art. 4) and in the 1993 Constitution (art. 3) there is reference to the numerus apertus system, i.e. the principle that the rights recognised in Chapter I of Title I of the Constitution, relating to the fundamental rights of the person, are not the only legally guaranteed ones, but must also include similar rights that arise from the inherent nature of man and the republican form of government. In this way not only is any form of restriction of rights by any means whatsoever forbidden but also it is recognised that all those rights that are specifically laid down in legal regulations form part of Peruvian law in view of their origin.

119. The second paragraph of article 5 of the Covenant contains a statement about conflicts that may arise between the provisions of the Covenant and other provisions of domestic law. In this connection the 1993 Constitution deals with the subject in chapter II "Treaties" of Title II "The State, the nation and its territory".

120. In this respect it should be remembered that in regard to the relationship between provisions of international law, such as those in a treaty, and the domestic law, both the 1979 and the 1993 Constitutions recognise the theory of modified monism under which it is considered that an international treaty forms part of national law, but before being embodied in it definitively must be approved by congress, and then ratified by the President of the Republic. Thus it is stipulated that treaties entered into by the State and in force form part of national law (art. 55).

121. It is also stipulated that the prior approval of Congress shall only be required in the case of treaties that deal with the following subjects: (a) human rights (b) sovereignty, dominium and integrity of the State (c) national defence (d) financial obligations of the State. In the same way treaties need

congressional approval that create, amend or repeal taxes, that require amendments or repeal of any law, and that require legislative measures for their implementation. In all other cases it shall only be necessary for the President to report them to Congress (art. 56).

122. It is also stated that if a treaty affects provisions of the Constitution, it must be approved by the same procedure that governs constitutional reform before being ratified by the President of the Republic (art. 57). In this case the provision of the Constitution will not be repealed, but will not be applied to the State's signatory to the treaty and if the treaty comes to an end the provision of the Constitution will return into force.

123. Finally, reference must be made to the fourth transitory and final provision of the 1993 Constitution, which is a clear demonstration of the importance that the Peruvian State assigns to international legal instruments, such as the Covenant on Civil and Political Rights and the rights contained in it, by establishing that legal provisions relating to the rights and liberties recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and with the international treaties and agreements on the same subjects ratified by Peru.

Article 6 - The right to life

124. The right to life recognised in the Covenant calls on States not only to punish deprivation of life of another, without this being further amplified, but also to create conditions that guarantee the enjoyment of the right to life by all human beings. Measures intended to increase the expectation of life of the population by taking steps to reduce infant mortality, malnutrition and epidemics, and to prevent pollution of the environment all guarantee enjoyment of the right to life. Another way of giving effect to this article is to take the measures necessary to avoid war, which is the supreme negation of that right.

125. Below are shown the measures adopted by the Peruvian State to give effect to the right to life.

126. Article 1 of the 1993 Constitution, states that the defence of the human person and the respect for his dignity are the supreme objectives of society and the State. In the same way it is laid down that everyone has the right to life and to enjoy a balanced environment adapted to the development of his life (art. 2, paras. 1 and 22). In addition, article 4 states that the community and State will give special protection to children, adolescents, mothers and old people who have been deserted, whereas article 7 prescribes that everyone has the right to the protection of his health, the family environment and that of the community, and also the duty to contribute to its promotion and defence.

127. Furthermore, stress must be laid on the policy developed by the Peruvian State for combating and punishing the illicit drug traffic and regulating the use of social toxins (art. 8).

128. As for health and social security, the Constitution stipulates that the State shall determine the national health policy and that the executive shall have the duty to regulate and supervise its application. In addition it is responsible for devising the policy and carrying it out in a pluralistic and

centralised manner, in order to give everybody equitable access to the health services (art. 9). Similarly, the State recognises the universal and progressive right of everyone to social security for his protection and for the enhancement of the quality of life (art. 10) and guarantees free access to health services and pensions (art. 11).

129. In regard to civil legislation, the 1984 Civil Code devotes book 1 to the rights of persons, recognising in its first article that the human being is subject to law from birth onwards. Furthermore, it deals with the right to life, stating that this cannot be renounced and cannot be ceded to another person.

130. As for penal legislation, the Peruvian Penal Code deals with the subject in Title 1 of the second book of the Penal Code, which defines offences against life, physical integrity and health. These offences are the following: (a) homicide (articles 106 to 113), (b) abortion (articles 114 to 120), (c) injury (articles 121 to 124), (d) exposure to danger and abandonment of persons in danger (articles 125 to 128) and (e) genocide (article 129). This part of the Code also designates aggravated and attenuated forms of these offences, and indicates the penalties for each.

131. An important point which must be included in this section, is that of anti-terrorist legislation. In this regard it must be pointed out that Peru has lived since 1980 through a situation of extreme violence, caused by the action of terrorist groups which have shown a systematic contempt for the life and dignity of persons. This situation of violence has caused the displacement of approximately 60,000 families, mostly peasants, who migrate to the city in search of safety, and more than 10,000 deaths in the last four years alone, plus the loss of thousands of millions of dollars etc.

132. In the face of these facts, the present government has issued a series of legal provisions with a view to meeting the terrorist threat and eradicating it for good. The main legal provisions on terrorism are the following:

(a) Decree Law No. 25474 (06/05/92) lays down the punishments for terrorist acts and procedures for investigation, examination and judgement;

(b) Decree Law No. 25659 (13/08/92) governs the crime of treason;

(c) Decree Law No. 25660 (13/08/92) amends the second paragraph of article 136 of the Code of Penal Procedure relating to the prosecution proceedings in case of terrorism and drug trafficking;

(d) Decree Law No. 25744 (27/09/92) contains provisions to be applied to police investigation, magistrate examination, sentencing and execution of the sentence for offences of treason, dealt with in Decree Law No. 25659;

(e) Decree Law No. 25880 (26/11/92) considers as having committed treason a person who, taking advantage of his position as a teacher, influences his pupils by defending terrorism;

(f) Decree Law No. 25916 (02/12/92) states that the prohibition on penitentiary and procedural allowances for persons convicted of offences connected with illicit drug traffic, terrorism and treason shall remain in force;

(g) Decree Law No. 25223 (21/08/93) amends the Penal Code in regard to the application of the sentence of life imprisonment for illicit traffic in drugs or narco-terrorism;

(h) Legislative Resolution No. 114-92-JUS (14/08/92) approves the regulations governing visits to those imprisoned for the crime of terrorism;

(i) Act No. 26248 (25/11/93) (i) amends the law regulating the crime of treason; (ii) amends Decree Law No. 25659 with a view to restoring the procedural guarantees of habeas corpus and amparo in proceedings against terrorists and traitors; (iii) repeals article 18 of Decree Law No. 25475: "In proceedings for terrorism, defence counsel shall not be allowed to act simultaneously for more than one accused at national level. Court-appointed counsel are exempted from this provision" and (iv) repeals Decree Law No. 25728 putting an end to the possibility of sentencing persons in their absence.

133. As stated in paragraph 131, subversive violence has caused great losses of life and material resources which could not accepted by the State, which therefore defended itself. This decision of the State was carried out by the armed forces and the police. Those bodies undertook the fight against subversion on an empirical basis, since they had not been trained for this type of activity, as a result of which they committed many errors that involved violations of human rights. Among these violations, mention may be made of unlawful executions and disappearances, some of which were discovered and punished when they occurred.

134. To avoid further such violations of human rights by the forces of order and to guarantee the life of citizens, the government has adopted a series of measures that permit adequate supervision of the fight against subversion. These measures are considered measures of pacification and are described below:

(a) Legislative Decree No. 665 authorises government investigators to enter detention centres in areas under a state of emergency to verify the state of the prisoners or persons reported as having disappeared;

(b) Decree Law No. 25592 lays down punishments for officials or public servants who deprive persons of their liberty by ordering and carrying out actions that result in their disappearance;

(c) Ministerial Resolution No. 1302-DE-SG states that in areas under a state of emergency, officers in the service of military institutions and any other centres of imprisonment, shall receive public prosecutors directly to enable them to carry out their functions;

(d) Resolution No. 342-92-MD/FN states that provincial attorneys for penal matters and provincial attorneys with mixed duties shall keep a register of reports that persons have disappeared.

135. On the other hand, and as is suggested in the submission of periodical reports on the Covenant of Civil and Political Rights, we duly report on the regulations at constitutional level governing the carrying of firearms by the armed forces and national police. The relevant chapter is one concerned with national security and defence, in which it is established that only the armed forces and the national police may possess and use weapons of war, and provides that all those that exist and all those manufactured or introduced into the country shall be considered the property of the State without legal proceedings or compensation. Nevertheless, an exception to this provision is the manufacture of weapons of war by private industry in the cases laid down in the law. Similarly this provision stipulates that the law shall be the instrument charged with regulating the manufacture, trade, possession and use by individuals of arms other than weapons of war (art. 175).

136. Furthermore, reference should be made to the provisions of the Environmental Code, since, as was said in the introductory part, the right to life also includes the right to live in a healthy environment that enables enjoyment of that right in adequate fashion. In this connection, the Code that has been adopted regulates the appropriate use and protection of natural resources and deals with environmental offences. It is important to note that this legal instrument declares that everyone has the irrevocable right to enjoy a healthy environment for his vital development and that it is the State's duty to maintain people's quality of life at a level consonant with human dignity (art. 1).

Genocide

137. In the article of Covenant which is being analysed here and specifically in its paragraph 3, an explicit mention is made of genocide, so that it is considered important to report that Peru signed the Convention on the Prevention and Punishment of the Crime of Genocide on 9 December 1948 and that the Convention was later approved in Legislative Decision 13288 of December 1985. Furthermore this concept was included in the 1979 Constitution in its article 109 and in the 1993 Constitution, in which, in the section dealing with extradition and establishing that political crimes or acts connected with such crimes are excluded, it is stipulated that acts of terrorism, assassination and genocide are not considered to fall into that category (art. 37). At present, as has been seen, the Penal Code regulates the concept of genocide in its article 129, in the titl concerned with offences against life, physical integrity and health.

The death penalty

138. In continuing the analysis of the law, reference must be made to the manner in which the death penalty has been dealt with in Peru. In this respect, it must be pointed out that article 235 of the 1979 Constitution stated that the death penalty could only be applied in cases of treason during a war against another country. In the present constitution under article 140, this situation is changed, and it is laid down that the death penalty can only be applied in

cases of treason during a war and for acts of terrorism according to the laws and treaties signed by Peru.

139. The problem was raised in relation to the American Convention on Human Rights or San Jose Pact, a document ratified by Peru in 1979 and in which the following provision occurs:

> "Article 4, para. 2. In countries that have abolished the death penalty, it may be imposed only for the most serious crimes, and pursuant to a final judgement rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply."

In relation to this provision, it has been maintained that by extending the grounds on which the death penalty may be applied through article 140 of the 1993 Constitution, the San José Pact has been violated in Peru and an international obligation has not been met.

140. Nevertheless, this line of argument does not take into account the basic facts to which reference has been made. In the first place, it must be borne in mind that article 140 contains an implicit veto on the possible application of the death penalty in Peru by providing that the maximum penalty cannot be meted out without transgressing the laws and treaties in force, to which Peru is a party. It is therefore necessary to refer to the San José Pact, which specifically establishes a barrier to extending the application of the death penalty (no reference is made to grounds, only explicitly to application of the death penalty) and this prevents Peru from extending the application of the death penalty to cases other than those laid down in the 1979 Constitution, without implementing the provision of the treaty. For this reason, Peru is not violating the San José Pact either in spirit or the letter.

141. On the other hand it must be considered that a constitution is designed for both the present and the future, and this implies a recognition of the recent tendency to consider terrorism as a crime against humanity, a tendency which took the form at a recent meeting of the Rio group in Santiago, Chile, of reaffirming that terrorism constitutes a systematic and deliberate violation of human rights which impairs the stability of the democratic system and of supporting the countries in the region that are engaged in processes of national pacification.

142. From all that has been said, it is probable that the need to amplify the San José Pact will take concrete shape in the very near future, the need becoming all the more obvious when it is considered that 24 years have elapsed since that international document was signed in 1969 when the progress of organised crime as a fatal threat for the citizens and governments of the region could not be foreseen. In this line of development of international law it is possible that States will be exempted from the restrictions established by article 4 paragraph 2 of the San José Pact in regard to punishment for international crimes.

143. Finally it must be borne in mind that the fourth transitory and final provision of the 1993 Constitution, to which reference has already been made, stipulates that the rules regarding rights and liberties recognised in the

Constitution are interpreted in conformity with the Universal Declaration of Human Rights and with the international treaties and agreements on the same matters ratified by Peru, among which the American Convention on Human Rights or San José Pact must obviously be counted.

Article 7 - Prohibition of torture

144. The 1993 Peruvian Constitution lays down in its article 2 paragraphs (g) and (h) that no one must be subjected to moral, mental or physical violence or to torture or inhuman or humiliating treatment. Anyone may request forthwith the medical examination of a person subjected to such treatment or put in a position where he is unable to have recourse himself to authority. Similarly it is established that statements obtained by violence have no validity and that a person who employs violence is liable to punishment (art. 2, no. 24, paragraph (h)).

145. Among the constitutional guarantees laid down in article 200 of the Constitution may be mentioned habeas corpus proceedings, which come into play when the right to personal freedom and safety is violated or threatened by acts of the police, political or judicial authorities, by civil servants or by individuals. As will be seen it is a constitutional guarantee designed to protect the right to personal freedom and safety, with a view to ensuring that a person whose freedom is threatened or affected fully recovers his liberty or that a prisoner is placed at the disposal of the courts. Basically, it is an attempt to ensure that nobody suffers unjust imprisonment or remains in prison indefinitely without being tried or released. As stated above, the pertinent rules are contained in Act No. 23506, the Habeas corpus and amparo Act (7 December 1982), together with Act No. 23598 (5 February 1992) and Decree Law No. 25432 (11 April 1992) that amend and supplement it.

146. As far as civil legislation is concerned it is important to point out that the 1984 Civil Code in its article 6 regulates acts involving disposal of the human body and of the organs and tissues that are not regenerated without serious prejudice to health or which appreciably reduce survival time. Such acts are prohibited when in any way whatsoever they are contrary to public order or morality. Acts of transfer of organs or tissues may be implemented in the life of the assignor and it is possible to make arrangements during life for them to be carried out on death. In the former case the assignor may revoke his decision without becoming liable to any proceedings. An act is valid by which a person disposes altruistically of his body to enable it to be used on his death for purposes beneficial to society. This provision alone is favourable to the person designated as beneficiary, to scientific teaching or hospital institutions or to non-profitmaking organ and tissue banks. Article 10 of the Civil Code stipulates that the head of the health establishment may dispose of part of the body when it can be used to conserve or prolong human life, but to do so must have the prior consent of the spouse of the deceased or of his descendants (sons, daughters, nieces or nephews in that order) or ascendants (parents, grandparents in that order or of his brothers and sisters). If the relatives are against it the body may not be disposed of.

147. In addition it must be mentioned that in Peru the following acts are considered to violate personal freedom and security such as arbitrary arrest when the right to keep silent on one's political, religious or philosophical convictions is not respected; torture, ill-treatment or the use of violence to

obtain statements from a person; the kidnapping of a person and the keeping of a prisoner incommunicado, etc. Anyone may bring proceedings for habeas corpus, including minors, and such proceedings can be brought before any examining magistrate, whether he is on duty or not.

148. The Peruvian government, in its wish to bring to an end the armed conflict waged by the terrorists, has passed several new laws on terrorism which have been referred to in a general way. Among them we can appreciate how respect is given to the rights of prisoners and how any type of torture is prohibited. Decree Law No. 25475 of 6 May 1992, which, legislates on punishments for terrorist acts and procedures for investigating, examining and sentencing, states in its article 3 that the penalty for terrorism shall be life imprisonment when the person concerned belongs to the directing group of a terrorist organisation as a leader, head, chief, secretary-general or equivalent person at national level, without any distinction in respect of his function in the organisation. If the person concerned is a member of the armed groups, gangs, squads, annihilation groups or similar groups in a terrorist organisation with the task of physically eliminating persons or groups of persons without defence, whatever the means employed, he will also be sentenced to life imprisonment.

149. Among the rules laid down for investigating the crime of terrorism it is stipulated that the Peruvian national police, among other things, shall strictly maintain respect for the defence of legality, human rights and international treaties and conventions. In this regard, at this stage of investigation, the presence of a representative of the Public Prosecutor's Office will be required. Detention of presumed terrorists shall be for not longer than 15 natural days and must be reported within 24 hours in writing to the Public Prosecutor's Office and to the penal judge concerned.

150. When the circumstances so require and the complexity of the investigations to be made also makes it essential for throwing more light on the facts under investigation, holding the prisoners absolutely incommunicado is permitted for the maximum period stated in the law, with the knowledge of the Public Prosecutor's Office and of the court with jurisdiction in the matter.

151. For their part the accused have the right to designate a defence counsel, who alone is authorised to intervene from the time that the prisoner makes clear his wishes in the presence of the representative of the Public Prosecutor's Office. If the prisoner does not designate counsel, the police authorities will appoint one de officio who will be provided by the Ministry of Justice. It is also stipulated in this decree law that persons sentenced for the crime of terrorism shall have the right to weekly visits, strictly confined to the their closest relatives.

152. In the case of minors sentenced for the crime of terrorism, special arrangements have been made. Thus, Decree Law No. 25564 stipulates, in its article 3, that in the case of persons under 15 and over 14 years of age who commit offences designated as terrorist acts, the juvenile judge will sentence them to detention in special sections in juvenile establishments, which carry out social reintegration programmes aimed at integral rehabilitation with a view to assuring their reinsertion into society.

153. On the other hand, and as part of the set of measures connected with pacification, Statutory Decree No. 665 of 3 September 1991 was adopted, which authorises procurators within declared emergency zones to enter detention centres to check on the situation of prisoners or those reported as disappeared. According to article 1, procurators in declared emergency zones are authorised to enter police stations, prefectures, military facilities and any other detention centre in the Republic to verify the situation of persons who have been detained or reported to have disappeared. It is also laid down that the provincial procurators must submit a monthly report on the human rights situation in their provinces to be forwarded to the national authorities. These provisions ensure that prisoners sentenced for treason have all their acquired rights respected.

154. Finally, the second part of article 7 prohibits the subjection of persons to medical or scientific experiments without their free consent. It must be emphasised that in Peru science and medicine are not very well developed and there is no legislation regulating medical and scientific experiments. What is covered by law and what has recently been operating is legislation on organ transplants. In the last few years a series of transplants have been carried out by the Peruvian Institute of Social Security, free of charge for the patients; publicity campaigns are being conducted to ensure that the population is conscious of the problem and can donate organs at the time of death.

155. On the other hand Act No. 23415 on organ transplants is aimed at regulating and providing a legal framework for situations connected, in one way or another, with the removal of organs for insertion into human beings. This Act covers everything connected with organ transplants in living beings and the removal of portions of the anatomy from corpses. Subsequently this Act was amended by Act No. 24703, the amendments being minor.

156. Another legal text that should be mentioned is the Code of Penal Enforcement: (Statutory Decree No. 634), which in its preliminary title article III stipulates that the enforcement of sentences and measures depriving those sentenced of their liberty shall be exempt from torture or inhuman or humiliating treatment or any other act or procedure that impairs the dignity of the prisoner. In this connection it is also pointed out that, if any violation of the provisions laid down in favour of the prisoners occurs, the path is open to complain to the director of the penitentiary establishment and in that case the prisoner can request the Public Prosecutor's Office to formulate a suitable report (art. 14).

157. On the other hand the Minors' Code approved under Decree Law No. 26102, stipulates that any child or adolescent has the right to respect for his or her personal integrity and therefore cannot be subjected to torture or cruel or degrading treatment.

Article 8 - Prohibition of Slavery

158. Below is given an account of the most important provisions against any form of slavery adopted internationally and applicable in Peru:

International Bill of Human Rights

"Article 4. No one shall be held in slavery or servitude: slavery and the slave trade shall be prohibited in all their forms"

American Convention on Human Rights

"Article 6.

1. No one shall be subject to slavery or involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.

2. No one shall be required to perform forced or compulsory labour. This provision shall not be interpreted to mean that in those countries in which the penalty established for certain crimes is deprivation of liberty and forced labour, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labour shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.

3. For the purposes of this article, the following do not constitute forced or compulsory labour:

(a) work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any person performing such work or service shall not be placed at the disposal of any private party, company or juridical person;

(b) military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service;

(c) service exacted in time of danger or calamity that threatens the existence or the well-being of the community; and

(d) work or service that forms part of normal civic obligations."

Convention on forced labour

"Article 2

1. For the purposes of this Convention the expression "forced or compulsory labour" shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

2. Nevertheless, for the purposes of this Convention, the term "forced or compulsory labour" shall not include:

(a) any labour or service exacted in virtue of compulsory military service laws for work of a purely military character;

(b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

(c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

(d) any work or service exacted in cases of emergency, that is to say in the event of war or of a calamity or threatened calamity such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests and in general any circumstance that would endanger the existence or the wellbeing of the whole or part of the population;

(e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent on the members of the community, provided that they or their direct representatives shall have the right to be consulted in regard to the need for services.

159. On a national level it must be mentioned that the 1993 Peruvian Constitution states that everybody has the right to personal freedom and security and consequently no form of personal restriction is allowed, save in those cases provided by law. In this way the provision in the Constitution stipulates that slavery, servitude and traffic in human beings in any form whatsoever are prohibited (art. 2, 24, para. (b)).

160. As for penal legislation it may be noted that the Peruvian Penal Code stipulates that anyone who unlawfully deprives another of his liberty shall be punished with imprisonment for not less than two or more than four years (art. 152).

161. Similarly, anyone who promotes or facilitates entry into or departure from Peru or movement within the national territory of a person who engages in prostitution shall be punished with imprisonment for not less than two or more than ten years. The punishment shall be not less than eight years or more than twelve years in the case of any of the aggravating circumstances listed in the previous article (art. 182). In order to broaden the analysis of the previous article some terms must be defined. Thus it may be said that the Slavery Convention contains the following def.nition: "Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised (art. 1 para. 1).

162. On the other hand, traffic in children for the purpose of employing them as child labour and certain practices that violate the freedom and dignity of women are also violations of international instruments, which describes them as institutions and practices similar to slavery. Thus section I of the Supplementary Convention on the Abolition of Slavery includes the slave trade and institutions and practices similar to slavery, such as the following (art. 1):

"(c) Any institution or practice whereby:

(i) a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family, or any other person or group;

(ii) the husband of a woman, his family or his clan, has the right to transfer her to another person for value received or otherwise;

(iii) a woman on the death of her husband is liable to be inherited by another person;

(d) any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour".

163. According to ILO Convention No. 29 concerning forced labour the term "forced or compulsory labour" shall mean all work or service exacted from any person under the menace of any penalty and for which said person has not offered himself voluntarily.

164. Another text of interest is the Minors' Code, in which forced labour, economic exploitation, child prostitution and traffic in children and adolescents are considered as forms of slavery (art. 4).

165. As can be seen, both international legislation and Peruvian legislation under which the Peruvian State has obligations to fulfil, condemn the practice of slavery in any form and seek the definitive elimination of its practice.

Article 9 - Right to liberty and security of person

166. This article of the Covenant refers specifically to the physical freedom of the person but it is understood that freedom of the person includes other manifestations in addition to the ability to move about freely. Each paragraph of the article refers to the various guarantees protecting the person in face of the possibility of being arrested or having been arrested. References will therefore be made to these different guarantees separately.

167. In the first paragraph reference is made to the lawful forms of arrest and deprivation of liberty. In this connection it must be said that in Peru the Constitution lays down the cases in which a person may be arrested; "Everyone has the right to personal freedom and security". Consequently:

(b) No form of restriction on the liberty of the person is permitted except in the cases provided by the law.

(g) No one may be arrested except on the authority of a written and substantiated warrant issued by a Judge or by the police authorities in the case of an offender taken in flagrante delicto (art. 2, para 24). A prerequisite for arresting someone is a court warrant to make an arrest, except in case of persons caught in flagrante delicto, when the police authorities can make an arrest motu propio.

168. The second paragraph states the right of an arrested person to be informed at the time of his arrest of the reasons for it and to be notified forthwith of the accusation made against him. In relation to this guarantee the 1993 Constitution stipulates in article 139, paras. 14 and 15, that the principles of jurisdictional function are that a person shall not be deprived of the right of defence at any stage of the proceedings and that everyone shall be informed immediately and in writing of the grounds and reasons for his arrest.

169. The third paragraph refers to the promptness with which a prisoner must be brought before the court and the right of an accused person to be tried without delay. It also indicates a preference for appearance before the courts rather than arrest. As said some lines above on commenting the first paragraph of the article, the constitution in article 2, 24, (g) lays down that an arrested person shall be made available to the court within 24 hours of arrest in ordinary cases and 15 days in case of terrorism, treason or drug trafficking.

170. In regard to the right to a rapid trial, the Statutory Decree No. 638 approving the new Code of Penal Procedure states in article II, preliminary title that criminal justice is free. It is provided subject to the safeguards of due process, without delay and under liability. With regard to limitations on arrest warrants article IX of the preliminary title in the new Code of Penal Procedure stipulates that provisions restricting the freedom of accused persons shall be interpreted in the restrictive sense.

171. Article 132 of the same legal instrument stipulates that personal liberty shall only be restricted when it is absolutely indispensable to the extent and for the time strictly necessary to ensure determination of the truth, application of due procedures and application of the law. For its part article 137 of the same Code of Penal Procedure states that detention shall not last more than 9 or 12 months, depending on the procedure. When that time has elapsed without a judgement of first instance having been handed down the accused must be immediately released.

172. The fourth paragraph of this article grants every person detained the right to appeal to a court, so that the said court may decide on the legality of the arrest and order release if the detention should prove illegal. Concerning this right the 1993 Constitution in article 200, para 1, states that there are constitutional guarantees of proceedings for habeas corpus in the case of over acts or admissions on the part of any authority, official or person that impair or threaten individual liberty or connected constitutional rights. The same Constitution in article 202 designates the Constitutional Court as the body responsible for supervising the Constitution for taking ultimate and definitive cognisance of decisions denying habeas corpus.

173. The fifth paragraph lays down the right to compensation for unlawful detention. In this connection article 139, para. 7 of the 1993 Constitution states that it is a principle and right of judicial office to award compensation

for judicial errors in penal proceedings and for arbitrary arrest, without prejudice to the liability to which it may give rise. In the same way Article X of the preliminary title of the new Code of Penal Procedure stipulates that the State guarantees compensation for judicial errors and arrests ordered or maintained in an arbitrary or negligent manner.

Article 10 - Right of prisoners and the treatment of persons deprived of their liberty

174. The basic framework of rules and provisions protecting prisoners in Peru is made up of the constitutional standards protecting the human being and particularly accused persons (arts. 2 and 139) and of the Penal Code of 1991 which lays down more specifically the characteristics that a custodial centre must possess, describes the function of penal sanctions and defines the situation of convicts in prison. In addition there is a third body of legal provisions, based on the Constitution and complementing the generic terms of the Penal Code. This is the Code of Execution of Sentences embodied in Statutory Decree No. 654 of July 1991, the purpose of which is to regulate all aspects of the penitentiary system, its structure, the persons involved and other matters specific to the prison environment.

175. The other provisions relating to food, health, consultations of various kinds and other topics connected with the personal and legal situation of convicts are laid down by the National Penitentiary Institute, a body connected with the Ministry of Justice but with its own autonomy and the authority to regulate aspects of matters dealt with in the Code of Execution of Sentences. The State protection embodied in various services and internal security in penal establishments also covers both convicts and persons undergoing trial and is adapted to the characteristics of each penal institution and each person.

176. As for the situation of the adults and juveniles to whom this article of the Covenant refers, it must be stated that segregation is practised. Persons under 18 years of age are imprisoned in so-called Special Juvenile Centres except when sentenced for the crime of terrorism, in which case juveniles aged 15 to 18 years are sent to prisons for adults. Those under 15 years of age are sent to the juvenile centres to undergo various types of treatment (medical, psychiatric, psychological, pedagogical etc.), since they are not liable to criminal punishment.

177. As for convicted and unconvicted prisoners and the grouping principle which is used in Peru, it must be mentioned in accordance with what has been said by the head of the General Directorate of Treatment in the Peruvian National Penitentiary Institute that persons awaiting trial are sent to prison and are grouped there in accordance with criteria of a socio-economic nature, level of education, cultural level, seriousness of the offence committed etc., after evaluation a person awaiting trial can be easily classified as rehabilitable or difficult to rehabilitate, with a view to transfer to an appropriate prison, or a prison set up on the basis of each of the criteria mentioned. Later the prisoner is evaluated by a panel similar to the first one, which determines on the basis of these criteria the cell block to which he will be assigned.

178. The appropriate Peruvian regulations (Constitution, Penal Code and Code of Execution of Sentences) clearly lay down the function of rehabilitation and

reinsertion in society that is fulfilled by penal institutions as bodies for formal social control in relation to convicts. In reality, as stated by the member of the Directorate already mentioned, this is a function that is constantly in view but which comes up against economic and structural barriers that make it almost impossible to cope with all prisoners on the basis of their particular personal characteristics. Nevertheless, there are programmes such as the pilot project for assistance to former convicts, entitled 'Programme for Work and Re-insertion In Society of Released Persons' authorised by Decree 10-92 JUS and a project in Lima for released prisoners under the control of INPE. It must be added that there are penal institutions in which modern means of support for prisoners are used that provide various patterns of work and existence that give some hope of making ex-convicts feel like members of society (e.g., the San Jorge penitentiary in Lima). In the same way many schemes have been launched at national level with a view to easing congestion in the prisons and carrying out more efficient work in the treatment of prisoners.

179. Nevertheless, the most difficult environment and one not offering many solutions is that of the penitentiaries that deal with terrorists, i.e. prisoners with very special characteristics who must undergo special treatment in coming years, so that we do not release delinquents in the future so evil that they begin again to try to destroy their country.

180. In this respect it is important to refer to the capture of Abimael Guzmán in September 1992, the principal ideologist responsible for exterminating more than 26,000 Peruvians, bringing about the massive displacement of thousands of persons and causing over twenty-two thousand million dollars in material losses. The capture of the supreme head of the Sendero Luminoso movement together with a great number of the leading cadres of the terrorist organisation was carried out on the basis of professional and clearcut intelligence work by the police forces in clear demonstration of how law and order can checkmate the negative forces that wish to destroy the country. From 12 September 1992 until the present day, progress in the arrest and trial of terrorists has been made and the majority of the leaders both of the Sendero Luminoso and of the Movimiento Revolucionario Tupac Amiral (MRTA) movements have been condemned to life imprisonment, while the arduous task is continuing of arresting and putting on trial those implicated in subversive activities, as well as carrying out wide publicity for the law on repentant terrorists, with good results. All these phenomena can be evaluated by analysing the appropriate statistics. (Annex 7***).

Article 11 - Imprisonment for failure to meet a contractual obligation

181. A precept protected by the 1993 Constitution is that of liberty to enter into contracts, by virtue of which everyone has the right to enter into a contract for lawful purposes provided that he does not contravene laws of public order. Moreover, article 62 of the Constitution protects the liberty of entering into contracts and guarantees that parties to such contracts may validly reach an agreement in accordance with the rules in force at the time it is entered into.

182. It is stipulated that the State guarantees that the terms of contract cannot be modified by laws or other provisions of any kind. Any conflict arising from contractual relationships shall only be solved by arbitration or by the courts. In addition, through contract-laws, the State can establish guarantees and offer warranties without it being possible for them to be

modified by legislation, without prejudice to the protection referred to in the previous paragraph.

183. Contrariwise to everything stated in the previous paragraph, in Peru there is a rule under which no one can be deprived of his liberty for debt, i.e. there is no imprisonment for debt' as stated in article 2, 24, para. (c) which states clearly that this principle does not bar legal proceedings for failure to pay maintenance.

184. In Peru there is complete freedom to enter into contracts, not only through the provisions of the 1993 Constitution, but also as laid down in the Civil Code, a body of law which in its article 1354, stipulates that the parties can freely determine the content of the contract provided that it is not contrary to peremptory provisions of the law, since only for reasons of a social, public or ethical nature can the law impose rules or establish restrictions on the content of contracts, (art. 1355). It is important to point out also that the provisions of the law on contracts supplement the wishes of the parties except-logically-when they are peremptory (art. 1356).

185. Recently a new Code of Civil Procedure has come into force which has introduced a number of innovations in the legal procedure that is entered into when a contract is not performed. It is a much more flexible civil procedure than that which obtained under the old code that has been repealed and today the Peruvian judge directs proceedings and puts them in motion, reducing the number of procedural steps. The proceedings are more oral than written, thus allowing the judge to be in constant contact with the parties.

186. There are three types of procedure; cognisance of the case, abbreviated procedure and summary procedure. Proceedings for failure to fulfil contracts give rise to a procedure of cognisance consisting of the entering of a claim with all the appropriate evidence, then the defence plea and an order of indemnification against any procedural irregularities, a conciliatory hearing at which the judge proposes alternative solutions to the parties and after fifty days the hearing of the evidence and finally a verdict.

187. Judicial proceedings are not the only pathway for resolving conflicts. Under Decree Law No. 25936 of 17 November 1992 an arbitration act was promulgated. Under that Act the parties when they sign the contract can insert an arbitration clause, eschewing the ordinary jurisdiction and submitting their conflicts to an ad hoc arbitrator or to a permanent arbitration body. This is a more rapid form of alternative justice. The State realises that ordinary court proceedings are much slower; with this clause the parties establish who shall be the arbitrators, the type of procedure to be followed and the time limit for the arbitrator or the arbitration tribunal to make an award.

188. On the other hand, to avoid production units, i.e. enterprises, having to close down because they have debts to creditors that have arisen as a result of juridical acts connected with the contracts signed, Decree Law No. 26161, which came into force on 20 January 1993, was passed. This is the Enterprise Restructuring Act and under it a natural or legal entity can apply to be declared insolvent and to initiate administrative proceedings before the Board for Simplification of Access to and Exit from the Market of the Chamber of Commerce. At this point a creditors' meeting is called that is responsible for determining the future of the enterprise. The creditors decide between the

economic and financial restructuring of the enterprise or its liquidation and extrajudicial dissolution on the basis of an agreement or bankruptcy, which is a judicial procedure.

189. Thus, with all this legal framework in force the contracting parties have various possibilities open to them for reaching an agreement and have the freedom to choose a form of solution for non-fulfilment of contractual obligations.

Article 12 - Freedom of movement and the right to leave one's own country and return to it

190. The 1993 Constitution protects the rights established in Article 12 of the Covenant on Civil and Political Rights through its Article 2. Paragraph 11 of that article acknowledges the right of every person to choose his place of residence, to move within the territory of Peru and to leave it and re-enter it, subject to restrictions connected with health or an order of the court or application of the Aliens Act. The same article in its paragraph 2 protects persons' right to obtain or renew their passports within or outside the territory of Peru.

191. Another important provision is article 36, relating to political asylum, which declares that the State recognises that concept and accepts the status of refugee granted by the host government. In the same way in the case of deportation the person who sought asylum will not be handed over to the country whose government is persecuting him.

192. As for restrictions relating to health the Health Code (Decree Law 17505 of 18 March 1969), sets forth the restrictions for controlling the entry of aliens on these grounds in its articles 102 to 109. In this regard article 102 states that the health authority is responsible for the supervision of health at the frontiers and can carry out that supervision in collaboration with the health authorities of the neighbouring countries. Furthermore, mention is made of the obligation laid on the Peruvian health authorities to collaborate with foreign health authorities in combined programmes for the prevention of all kinds of communicable diseases, their activities being designed to prevent the spread of such diseases (art. 103).

193. Article 105, for its part, grants the health authorities the right to supervise all the coastal, air, river, lake and land posts in Peru, putting persons and things under its authority, whereas Article 106 gives them the right to call for the isolation of Peruvians or aliens and the quarantine of all means of transport for health reasons.

194. Another important point relates to the obligation on international transport enterprises to comply with the provisions of the Health Code and the orders of the Peruvian health authorities (art. 107). As for responsibilities, article 109 lays an obligation on international transport enterprises to ensure that persons shall not enter the country without the vaccination certificates called for by the Peruvian State or imposed by the health authorities.

195. The Aliens Act (Statutory Decree 703 of 5 November 1991), lays down requirements for the entry into and egress from the territory of Peru by Peruvians or aliens and sets forth the restrictions imposed for reasons of

national security, public order, public morality, etc. Among the requirements for entry into Peru is the rule that to enter the country an alien must be in possession of a passport or similar travel document. Entry is permitted only through international airports, major sea ports and authorised frontier control posts. International passenger transport enterprises have the duty to present to the immigration authorities at the time when the means of transport concerned enters or leaves the country, passenger and crew manifests with all the data necessary to identify them.

196. Entry into or egress from Peru is prohibited until the immigration authorities have inspected and checked documentation. The immigration authorities can prevent aliens entering the territory of Peru if:

(a) they have been expelled from Peru by order of the courts or in application of the regulations on aliens,

(b) they are fugitives from justice for offences classified as ordinary offences in Peruvian legislation,

(c) they have been expelled from other countries for the commission of offences considered as ordinary offences under Peruvian law and for infringements of regulations on aliens similar to those of Peru,

(d) the health authorities consider that they will put public health in danger if they enter the country,

(e) they have histories of imprisonment or arrest for offences considered as ordinary offences under Peruvian law,

(f) they do not possess the economic resources that will enable them to meet the expenses of living in Peru,

(g) they have been the subject of proceedings abroad for offences considered as ordinary offences meriting imprisonment under Peruvian law,

(h) they do not meet the requirements of the present Aliens Act and the regulations on aliens.

197. For aliens to leave the territory of Peru the Aliens Act stipulates that departure and re-entry must be authorised by the Ministry of Foreign Affairs in cases of residents with diplomatic, official or consular status and by the Immigration and Naturalisation Board of the General Directorate of the Ministry of the Interior in the other cases.

198. If they wish to stay and reside in Peru, aliens must prove their immigrant status through their passport, their aliens certificate or identity document issued by the competent authorities. The periods of stay for aliens admitted with a residence visa are:

(a) for diplomatic, consular and official persons or those that have been granted political asylum or refugee status until a time fixed by the Ministry of Foreign Affairs,

(b) for ministers of religion, students and independent workers for one year, with possibility of renewal,

(c) for immigrants, for an indefinite period.

199. In conclusion, the Aliens Act regulates every matter mentioned above and every aspect of Peruvian law, so that it can be stated that they meet with the stipulations of Article 12 of the Covenant on Civil and Political Rights.

Article 13: - Prohibition of expulsion of aliens without legal safeguards

200. To begin with it must be emphasised that under the terms of the Constitution aliens enjoy all the rights possessed by Peruvian citizens except in regard to the limitation on their working within fifty kilometres of the frontiers and in general when considerations of national security dictate otherwise.

201. In addition to this, reference must be made to the Aliens Act (Statutory Decree 703 of 14 November 1991) which contains the procedure, the conditions and the means of defence possessed by aliens faced with expulsion from Peru. These are the same as those set out in the Aliens Regulations. Under the Act referred to articles 29 and 63 refer specifically to cases of expulsion from and prohibition of entry into Peru. Thus article 29, relating to prohibition on entry, covers two cases: the first refers to persons who have been expelled by order of the courts and in application of the Aliens Regulations and the second relates to fugitives from Peruvian ordinary law.

202. In regard to article 63 on Cancellation of Residence or stay in Peru, three cases are referred to: the first occurs when acts have been committed contrary to the security of the State, internal order and national defence; the second refers to cases in which aliens do not possess economic resources sufficient to meet the cost of their stay; and the third refers to aliens who have regained their liberty after serving sentences of imprisonment.

203. Additionally, and in conformity with the terms of article 13 of the Covenant, there is a regulation that explains the concept of national defence and security in relation to expulsion for that reason and in line with an explicit provision (Decree Law 743, National Defence Act).

204. As to the means of defence open to an alien in one of the hypothetical situations mentioned above, they consist in putting evidence that reliably contradicts the grounds given for expulsion or prohibition of entry into Peru before the competent authority in the Ministry of Foreign Affairs, which has the power to revoke or maintain the decision concerned, to permit entry or to grant domicile within the territory of Peru to persons who have been unjustly placed in one of the situations that call for expulsion or cancellation of domicile or stay in Peru.

205. Finally, in regard to the concept actuating the Peruvian State in respect of the legality of the juridical position of an alien in Peru, it can be characterized as very broad, since it derives from an interpretation a contrario of articles 29 and 63 of the Aliens Act, when an alien simply enters the country with the visa required and does not fit into any of the five categories

described, providing a possibility of entry or of cancellation of residence or stay in Peru.

206. An important point relating to this article in the Covenant is extradition, a mechanism provided for both by the 1993 Constitution in its article 17 and Act No. 24710, article 10, both legal provisions that prohibit extradition of a person if it is considered that extradition has been requested for the purpose of persecuting or punishing that person for reasons of religion, nationality, opinion or race.

207. The Constitution lays down the procedural aspects of extradition, stating that it can only be granted by the Executive after a report of the Supreme Court in fulfilment of the Act and Treaties and in accordance with the principle of reciprocity, i.e. to the extent that the country requesting extradition of an individual who is in Peru guarantees that it will act similarly in the case of Peru requesting extradition of someone else.

208. In this connection, Act No. 24710 reiterates these concepts and makes reciprocity conditional on respect for human rights, establishing as a general rule for admitting extradition that the offence whatever it may be is subject to a sentence not less than one year's imprisonment (Articles 3, 6 and 7 of Act 24710). Similarly, it is stipulated that persons pursued for political offences and connected acts shall be excluded from extradition unless they are responsible for genocide, assassination or terrorism.

209. In this respect, it must be added that under Peruvian legislation passive extradition is not proceeded with if the offence for which extradition is requested was purely military, against religion, political or connected with the press or opinion. It is further stipulated that despite the victim of the offence liable to punishment or the person referred to in the extradition request having exercised political functions, this does not justify such an offence being classified as political (art. 6, para 6, Act 24710).

Article 14 - Right to a public trial with the due guarantees

210. Article 14 of the International Covenant on Civil and Political Rights contains a set of provisions aimed at guaranteeing correct administration of justice. The provision then deals with the subject traditionally known as guarantees of the administration of justice. Because of its wide scope, an analysis of this article of the Covenant will be made paragraph by paragraph.

211. What this article deals with is the principles and rights of the jurisdictional function, pointed out in the present 1993 Peruvian Constitution, article 139. Such provisions are a set of minimum principles and rights that must inescapably be fulfilled if the judicial process is to be valid and hence to make fully effective its immediate purpose which is to enable those on trial to rely on effective judicial guarantees.

212. What is said in the previous paragraph constitutes what is nowadays known as due process of law, i.e. a set of prerequisites, principles, procedures and rights recognised as belonging to individuals that guarantees that their claims, channelled through judicial proceedings, can safely rely on the necessary and suitable elements to ensure proper administration of justice. Rules of a procedural nature contained in article 14 of the Covenant are therefore minimum

requirements if individuals are to enjoy effective protection of the law. It has not been claimed that this covers the whole range of rights which litigating parties are entitled to. The purpose is merely to supply certain elements necessary to ensure that the outcome of the procedure is in accordance with what the parties seek: accepted, rapid and efficient justice.

Paragraph 1

213. The first paragraph deals basically with three aspects:

(a) the first is connected with the equality of individual persons before the tribunals and the courts;

(b) the second seeks to define the nature of a judicial authority in a democratic State; and

(c) the third, on which more emphasis is put, is to do with the public nature of the trial and exceptions to it.

214. As for the first point, obviously the enjoyment of procedural equality by the parties is a requirement sine qua non for due process of law to be respected. As for equality of treatment before the courts, reference must be made to the constitutional provision that everyone has the right to equality before the law and that there must be no discrimination on the grounds of origin, sex, race, language, religion, opinion, economic status and condition of any other kind (art. 2, para 2).

215. In this connection the new single text of the provision in the Code of Civil Procedure (22 April 1993) lays down in its preliminary title the principle of "socialisation" of proceedings, under which everyone has the right to effective judicial protection for the exercise and defence of his rights or interests, subject to due process of law, and the court must avoid letting inequality between persons for reasons of sex, race, religion, language or social, political or economic condition, affect the conduct and result of the trial (art. VI).

216. Reference must also be made to the Penal Code which, in article 10 of chapter III "Personal application", title 1, "The Criminal Law", points out that criminal law must be applied with equality and that the prerogatives granted to certain persons by reason of function or post must be explicitly spelt out in laws and international treaties.

217. In addition, it is also important to emphasise that the Covenant refers both to tribunals and courts of justice whether they are ordinary or special, i.e. it also covers military courts, which of course have specific competence over those that infringe military legislation, in the Peruvian case the Armed and Police Forces' Code, or to put it differently over members of the armed forces or the police who commit offences in the exercise of their duties to whom the procedural rules that we are analysing are obviously also applicable.

218. In this connection the Peruvian State bases its action on equality before the law without any proviso or discrimination by reason of origin, race, sex, language, religion, opinion, economic status or any other type of condition, i.e equality of treatment is given to inhabitants of urban areas and rural areas

alike and to women as well as men, without consideration for their socio-economic position.

219. On the other hand it should be noted that the ordinary courts and military courts in Peru, as fundamental parts of the social machinery of a nation, have the difficult task of protecting democratic institutions and human rights against the criminal acts of terrorists. Similar challenges - in different contexts and situations - had to be faced by the Military Court in Nuremberg in order to punish those charged with destroying human dignity and personality in crimes that anguished the international community in other decades. In this connection reference must be made to the fact that the military courts at present are competent to deal with the crime of treason in cases of terrorism, which is governed by Decree Law No. 25659.

220. Recently some discussion has been aroused as to the scope of application of this offence, i.e. on those punishable under the law for this class of crime. A brief reference will therefore be made to the juridical significance that legal doctrine attaches to this offence, which must be understood as a breach of the loyalty due from citizens to the nation to which they belong. It this regard there is discussion as to whether it is only the nationals of a country that can be judged and punished for this crime or if it is sufficient that they reside in the country concerned and it is not necessary for them to have its nationality.

221. In this respect it must be pointed out that article 78 of the Code of Military Justice (Decree Law No. 23214 of 24 July 1980) in the section on offences against the safety and honour of the nation, clearly states the following:

> "Any Peruvian, by birth or naturalisation, or anyone in any way protected by the laws of Peru, when he performs any of the following acts, commits the crime of treason".

222. Cases of aggravated terrorism having been defined as the offence of treason and hence regulated by the Code of Military Justice, it must be understood that the general provisions in force for this type of offence apply to them and, among those provisions is article 78, specifically designed to define the scope of application.

223. It must be mentioned furthermore that the participation of the military courts in the trying of terrorists is made possible by the adoption of Decree Law No. 25659 under which certain patterns of terrorist action are classified as treason (in practical terms the concept of "aggravated terrorism".

224. On the other hand it is considered that the reasons for which the participation of military tribunals in cases brought against terrorists became necessary lie in the inability of the ordinary courts to carry out efficient work which, while administering justice adequately, will effectively punish those responsible for terrorist acts in Peru. It is for that reason that the necessity arises to remit cases of aggravated terrorism to the military courts, whose special characteristics enable them to develop an effective internal security system to the benefit of the military judges. All this makes it possible for them to carry out properly their work of trying terrorist

offenders. Below an account is given of the main aspects of the military courts in dealing with cases of aggravated terrorism:

Military courts

Structure

225. There are two instances in each of the five military regions:

(a) First instance:

Permanent Court Martial: gives a verdict that can be appealed against before the court of second instance. President: army colonel. Assessor: colonel in the military legal corps. Secretary: major in the military legal corps. Secretary of the court of investigation from which the case comes: captain in the military legal corps. In each military zone there are two or more courts of investigation, made up of a colonel as President and a captain as Secretary.

(b) Second instance:

Supreme Council of Military Justice made up of generals in all the armed forces. This is the ultimate court of appeal of military justice. It should be noted that members of the military courts are changed every two years.

Competence

226. Military courts are competent in cases of offences of treason, which occur when the following means are used:

(a) utilisation of car bombs or similar vehicles, explosive devices, weapons of war or similar weapons that cause the death of persons or impair their physical or mental health or damage public or private property, or in any other way give rise to serious danger for the population.

(b) storage and illegal possession of explosives, ammonium nitrate or elements that serve for the fabrication of that product, or the voluntary donation of inputs or elements that can be used in the manufacture of explosives for terrorist acts as listed in the previous paragraph (article 1 of Decree Law No. 25659).

227. Similarly, a person commits an offence of treason

(a) who belongs to the group directing a terrorist organisation as leader, head, chief or equivalent rank,

(b) who belongs to armed groups, gangs, platoons or similar units in a terrorist organisation, which have the task of physically eliminating persons,

(c) who supplies, delivers or divulges information, data, plans, projects and other documentation, or facilitates the entry of terrorists into buildings or premises in his charge or custody with a view to furthering the damaging outcome mentioned in paragraphs (a) and (b) of the previous article (art. 2 of Decree Law No. 25659).

Procedure

228. The procedure applicable to these cases is the Summary Procedure laid down in the Code of Military Justice for trials in a theatre of operations (art. 1, Decree Law No. 25708), while in addition, in handling the cases, use may be made of the provisions of article 13 of Decree Law No. 25475 relating to investigation and trial. In such a case the procedural terms will be reduced to two thirds (art. 5 of Decree Law No. 25659). Mention should be made of article 721 of the Code of Military Justice which stipulates that when the offence is flagrant a special court martial will be held and will receive summary evidence and give a verdict immediately.

229. As for the second point dealt with in this article 14 of the Covenant, it may be pointed out that the 1993 Constitution in chapter VII relating to the judiciary brings together the principles and rights of the judiciary which were dealt with in Peru's core document (see document HRI/CRE/1/Add.43/Rev.1). It has thus laid down that independence of the judiciary is a necessary requirement for the true administration of justice. In this sense it must be understood that no authority can arrogate to itself cases pending before a judicial authority or interfere in its exercise of its functions.

230. In this connection it must be mentioned that the Organization of Justice Act recognises, as general principles, the political, administrative, economic and disciplinary autonomy and independence of the courts. The competence of the courts is based on the principle of the unity and exclusivity of their functions, the existence of military justice and arbitration alone being admitted.

231. Observance of due legal process and jurisdictional safeguards is another principle from which it follows that nobody can be removed from a jurisdiction pre-determined by the law or subjected to a procedure different from those previously laid down. In the same way, impartiality is closely connected with the independence that should be enjoyed by the judiciary so that no authority can interfere in cases pending before the court or in the exercise of its functions.

232. It the third place, paragraph 1 of article 14 of the Covenant refers to the public nature of proceedings, a principle recognised by article 139, para 4 of the Constitution, which states that the only exceptions that can be made to this principle are cases specified in a law. In any case, there is a provision that trials in which the defendants are public officials, those involving press offences and those relating to fundamental rights guaranteed by the Constitution, are always public.

233. Although in practice this is a provision applicable basically to penal cases, it is not exclusively so, given that, to quote an example, in the hearing of civil cases, the parties express their point of view concerning the dispute

in a preliminary public manner. For its part the Peruvian Code of Procedure enunciates this principle in its article 268.

Paragraph 2

234. The second paragraph of this article of the Covenant deals with the presumption of innocence. In this respect the 1993 Peruvian Constitution in numeral 24, paragraph (e) of article 2, states that everybody is considered innocent until found guilty by process of law, i.e. after conclusion of legal proceedings with the proper evaluation and analysis made by the judge, who has had to determine whether a person is liable or not.

235. For its part, the Code of Penal Procedure in its preliminary chapter, states this right when it points out that any accused person is considered innocent and that only after a trial carried out in accordance with the law and in fulfilment of an enforceable sentence pronounced by a competent judge will the penalty or security measure be applied (Art. III).

Paragraph 3

236. The third paragraph of article 14 of the Covenant refers to very important rights which are dealt with in Peruvian law.

237. The right to be informed in detail and without delay of the nature and grounds of the accusation formulated against a person (including specifying the law that has been infringed and the facts on which the accusation is based), is dealt with in article 139, numeral 15. In the same way numeral No. 5 of the same article, emphasises the written statement of grounds for judicial decisions in all grades of court, with explicit mention of the law applicable and the factual basis on which the decisions rest.

238. The right to communicate with a defending counsel of one's own choice and to be given time to prepare one's defence, is embodied in the so-called "principle of adversary procedure" (one of the most important universal procedural rights at every level in modern civilised societies), according to which there is no due process if the parties do not have the right and possibility of defending themselves, a right which begins with the right to be heard before being sentenced by the court. This right is contained in article 139, numeral 14, where, in addition to it being established as a principle of judicial proceedings that no-one may be deprived of the right of defence at any stage in proceedings, also guarantees everybody's right to communicate personally with his defending counsel and be advised by that counsel once summoned or arrested by any authority.

239. The Code of Penal Procedure is clear in this connection when it states that it is the right of a person accused of something to be assisted by a defending counsel of his choice, an inviolable and unconditional right once the defendant has been summoned or arrested by the authorities. In addition, it is stipulated that penal procedure will guarantee the exercise of all the rights belonging to a person accused of an offence (art. VIII of the preliminary title).

240. Similarly, this article in the Covenant lays down the right of defence free of charge through the services of a court-appointed defending counsel

should the accursed person lack sufficient financial means. In this regard, the Code of Civil Procedure deals with the subject in the preliminary title, laying down the principle of free access to justice, which provides that access to the justice service is free of charge, subject to payment of costs and fines in cases laid down in that same Code.

241. Furthermore, reference must be made to the Organization of Justice Act, which devotes a whole chapter in Title II to the principle of defence free of charge. Thus it states that a court-appointed counsel will give his services free of charge to persons of slender means, the whole of the personal costs being payable by the losing party. Furthermore, as a means of supervising the system, it is laid down that specialised divisions and courts shall ask for disciplinary sanctions against court-appointed counsel if they fail to carry out their duties and may also go on to dismiss them at the request of the District Executive Council of the High Court concerned. In addition, the judges will communicate these facts to the bar associations for the application of the requisite disciplinary sanctions.

242. The right to a trial without undue delay is connected with the right to prompt information regarding the charge brought, to the extent that it is laid down that the official concerned shall be liable for failure to fulfil this obligation. This in turn is closely connected with the right to minimum imprisonment conditions and with the length of imprisonment of a person.

243. The right to the use of one's own language is one without which there would be no effective judicial protection since the accused would not be able to provide an adequate defence against the charges brought against him. Of course, this not only means that the person should be told in his own language the grounds for the accusation against him, but also that he should obtain the necessary facilities to defend himself during the whole trial, using his original language. In this connection the Organization of Justice Act provides that judicial proceedings shall be carried out in Spanish but that in cases in which the language or dialect of the accused is not Spanish the proceedings shall be carried out compulsorily with an interpreter present. In addition, emphasis is laid on the statement that the accused must in no way be prevented from using his own language or dialect during the hearing.

Paragraph 4

244. Paragraph 4 of Article 14 refers to the special circumstance in which a juvenile is involved as having committed an offence. Here, in accord with international agreements for the protection of juveniles, it is provided that the case will be dealt with with the greatest care in order to ensure the reintegration of the accused into society. Here we wish to refer mainly to the Peruvian Penal Code which sets forth the grounds which annul or reduce the penal liability of persons less than 18 years old (art. 20, para. 3), a rule that was later modified by Decree Law No. 25564 in regard to cases of terrorism.

Paragraph 5

245. This paragraph lays down the so-called "right of appeal", also known as the "right of re-hearing", which in the Peruvian Constitution is guaranteed by article 139, numeral 6, which lays down the right of re-hearing. In the Peruvian Penal Code the principle is also laid down that no-one can be tried a

second time for a punishable offence in regard to which a final sentence has been handed down (art. 90). For its part, the Code of Penal Procedure, in its preliminary title, contains this principle when it states that no-one can be proceeded against or punished more than once for the same offence or omission. It is also laid down as an exception to this rule that a review by the Supreme Court of a sentence or acquittal may be ordered in certain specifically defined circumstances (art. IV).

246. Similarly, the Organization of Justice Act in article 11 stipulates that sentences of the court are subject to review in a higher court in accordance with the law. Similarly, it is prescribed that the interjection of a means of rebuttal constitutes a voluntary act of the accused and that the decision in the second instance constitutes res judicata, appeal only being allowed in the cases laid down by the law.

247. As for an annulment appeal in military courts, this can only be brought before the Supreme Council of Military Justice if the penalty imposed is that of imprisonment for life or for thirty years or more. When the case is heard by the Supreme Council of Military Justice under appeal, review or nullity proceedings the assessor or his deputy will join that judicial body as examining officer (art. 2 of Decree Law No. 25708).

248. As for proceedings for the safeguard of rights in the military courts, article 2 of Act No. 26248 amends article 6 of Decree Law No. 25659, stipulating that demand of habeas corpus can be brought under the conditions laid down in article 12 of Act No. 23506 on behalf of prisoners involved in or tried for acts of terrorism or treason.

249. Furthermore, the Code of Civil Procedure deals with the subject in its preliminary title, when it provides that proceedings shall be possible before two grades of court, except where there are specific legal provisions to the contrary (art. X). Similarly, chapter III "Appeals" and chapter IV "Annulment", within Title XII "Means of challenge", are pertinent here. As already said, on conclusion of proceedings before the appeal court, the res judicata principle comes into play. Nevertheless the remedy of annulment can be sought against the appeal verdicts handed down by the higher courts and against the orders issued by those courts which on appeal put an end to the proceedings and all the decisions indicated by the law. The purpose of this resort is the correct application or interpretation of the law and the unification of national case law by the Supreme Court of Justice.

Paragraph 6

250. This paragraph of article 14 refers to what is commonly known as compensation for judicial error. It should be noted that this article is not limited to the right to compensation of persons sentenced to periods of imprisonment. Hence it must be presumed that the right is also possessed by persons put on probation or sentenced to the loss of political rights and fines. In this respect the pertinent constitutional provision is article 139, numeral 7, which establishes as a principle compensation - in the form laid down by the law - for judicial errors in penal proceedings and arbitrary imprisonment without prejudice to the liability to which it gives rise. For its part, the Code of Penal Procedure provides that the State guarantees compensation for judicial errors and for imprisonment ordered or maintained in an arbitrary or

negligent fashion, without prejudice to the legal action that may be taken against those who prove to be responsible for them (art. X of the preliminary title).

Paragraph 7

251. This paragraph relating to the penal environment lays down the principle of res judicata which is the main effect of a sentence that brings proceedings to an end. The constitutional provision is article 139, numeral 13, which establishes the principle that it is forbidden to revive proceedings that have ended in a verdict declared enforceable. Furthermore, it is provided that amnesty, pardon, dismissal of proceedings or prescription shall have the effect of res judicata.

Article 15 - Principle of non-retroactivity of the law

252. This article prohibits the retroactive application of the penal law and relates both to the definition of certain acts as offences and to the seriousness of the penalty that may be imposed for an offence. The Peruvian law recognises the non-retroactivity of the penal law except in those cases in which later provisions are more beneficial to the accused person.

253. The 1993 Constitution in article 103 states that special laws may be passed when the nature of things so demands, but not because of the difference of persons. No law is valid or effective retroactively except in a penal case when it favours the defendant.

254. Other regulations in force in Peru relating to the rights laid down in article 15 of the Covenant are as follows:

(a) 1993 Constitution (art. 139, para. 11): It is a principle and right of the judiciary to apply the law that is most favourable to the defendant in the case of doubt or of conflict between penal laws;

(b) 1993 Constitution (art. 2, para. 24d): Everyone has the right to personal freedom and security; hence no-one will be proceeded against or sentenced for an act or omission which at the time of being committed had not previously been defined in the law explicitly and unequivocally as a punishable offence, nor will he be punished with a sentence not laid down in the law;

(c) Code of Penal Procedure (preliminary title): The law on penal procedure is one of public policy and is applicable in the territory of Peru from the time when it comes into force, including for the remainder of proceedings in progress for an offence committed previously and on which a verdict has not yet been pronounced, unless its provisions are more favourable to the accused;

(d) Penal Code (art. II of the preliminary title): This stipulates that nobody shall be punished for an act not regarded as an offence or infringement by the law in force at the time when it was committed, nor subjected to a punishment or security measure not laid down in the law;

(e) Penal Code (chapter II of title I of book 1, art. 6 to 9): These articles contain the principle of non-retroactivity of the penal law and of the application of the law that is most favourable to the accused or condemned person.

It may therefore be affirmed that this principle is respected in Peruvian legal practice and that there is a consensus as to its obligatory nature.

Article 16 - The right to recognition everywhere as a person before the law

255. Article 16 lays down the unrestricted right, explicitly mentioned in article 4 of the Covenant, of everyone to recognition as a person before the law. In speaking of this right, reference must be made to the concept that makes this characteristic inherent in the human being effective and applicable: the legal person. Everybody to whom the law attributes rights and duties is a legal person. Thus the human being is recognised as the subject of legal provisions and this quality can be acquired at birth and/or before birth.

256. This protection is provided by the Constitution. Article 2, para 1, of the 1993 Constitution states that "A conceptus is a legal person in everything of advantage to him"; thus the maximum level of legal protection is guaranteed by granting the conceived being the juridical characteristic of legal personality. This means that under Peruvian law the right to be a person before the law is granted to the human being from the very moment of his or her conception.

257. Peruvian legislation in the sphere of private law recognises a being once conceived and born as a legal person. However, in recognising this category it is logical and pertinent to lay down certain differences from other centres of subjection to the law. Article 3 of the Civil Code provides that every person, whether a natural or legal entity, is subject to the law and to the restrictions laid down therein.

258. As already seen, article 1 of the Civil Code provides that the human being is a legal person from birth, on the understanding that human life begins with conception. Thus, the conceptus is a legal person in respect of everything favourable to it and the attribution of patrimonial rights is dependent on being born alive. As can be seen from the tenor of the legal provision in question, the conceptus is considered as a legal person with rights attributed to it that differ from those attributed to natural and legal persons referred to in article 3 of the Civil Code. In the period during which the conceptus is such, it will have the capacity to enjoy the rights favourable to it. Nevertheless it totally lacks the capacity for exercise of those rights through representatives during the time that it remains in the mother's womb. Hence the conceptus enjoys without restriction non-patrimonial rights such as the right to life, but with regard to patrimonial rights, such as the right of succession or the right to receive bequests, for example, it remains conditional on being born alive.

Article 17 - Right to privacy

259. The 1993 Peruvian Constitution in title I headed "The individual and society" provides, in article 1 para. 7, that everybody has a right to honour and good reputation, to personal and family privacy and to his own voice and image and also provides that anybody affected by inexact statements or accused

by any of the media shall have the right to this being confirmed free of charge, immediately and in due proportion, without prejudice to liability under the law. In addition, the same Constitution in article 97, provides that when the Congress of the Republic, through its commissions, wishes to carry out any type of investigation and to that end, the members of those commissions can be given access to any type of information, including secret bank accounts and the accounts of the person or enterprise being investigated and to the tax reserves, the type of information which they have not the authority to obtain, whether they are members of the legislative authority or not, is the information affecting personal privacy.

260. Moreover, the Penal Code in article 154 provides that a person who violates personal or family privacy, whether by watching, listening to or recording an act, a word, a piece of writing or an image using technical instruments or processes and other means, shall be punished with imprisonment for not more than two years.

261. Thus also the new Organization of Justice Act, published on 29 November 1991, indicates in article 185, para 6, that the judiciary may seek retractions through the mass media in defence of their honour when it has been put in question, reporting on it to their hierarchical superior without prejudice to entering a formal complaint.

262. A second aspect considered in this article of the Covenant is the inviolability of the home. Article 1, para. 9, of the Constitution states that everybody has the right to the inviolability of his home. No-one may enter it or carry out investigations or recordings without the authorisation of the person inhabiting it and without a court warrant, except in the case of flagrante delicto or very serious danger of an offence being committed. Exceptions for reasons of health or serious risk are regulated by the law. Nevertheless, in chapter VII "State of exception", article 137, it is provided that the President of the Republic, in agreement with the Council of Ministers, may decree for a definite period in the whole of the country or in part of it and following a report to the Congress a state of emergency or state of siege. A state of emergency is decreed in case of disturbance of the peace or internal order or disaster or serious circumstances that affect the life of the nation. In this eventuality, the exercise of certain constitutional rights, such as the inviolability of the home, may be restricted or suspended. The period for which this state of exception can be enforced must not exceed 60 days and its extension requires a new decree.

263. The Penal Code, for its part, provides in articles 159 and 160, that a person who unlawfully penetrates into the dwelling or home premises or into the outbuildings or compound inhabited by another person and remains there, refusing lawful orders to leave, shall be punished with imprisonment for not less than 2 years and with 30 to 90 days' fine. Moreover, a public official or civil servant who enters a home without the formalities prescribed by the law and except in the cases laid down by the law shall be punished with imprisonment of not less than one year or more than three years and disqualification for one to 2 years.

264. The Code of Penal Procedure contains this right and provides that except in cases of flagrante delicto or imminent danger of commission of a crime, and where there are reasonable grounds for it, the Public Prosecutor shall request

entry into and search of a home, a business or a temporarily inhabited place and of any other enclosed premises when it is foreseeable that entry into a particular set of premises in performance of duty will be refused. In addition the request must state the specific purpose of the entry and search and the approximate time that it will last (Art. 163).

265. In addition, the order must contain the name of the investigator authorised, the specific purpose of the search, the precise designation of the building that is to be entered and searched, the maximum duration of the search and the legal consequences of resistance to the order (art. 164).

266. To deal with possible abuses by the forces of order, article 200, para. 2, of the Constitution provides that one of the constitutional guarantees is an action for amparo which is taken in the event of an act or omission on the part of any authority, official or person that violates or threatens constitutional rights other than those relating to individual freedom. It is a rapid judicial process, to which persons may have resort to demand and protect their constitutionally recognized rights when they have been threatened or violated. To invoke it, it is not necessary that the violation of the right shall have taken place; a simple threat to violate it gives a right to amparo. The purpose of a summons of amparo is to restore things to their state before the violation or threat of violation of a constitutional right. It is concerned therefore with preventing the violation of the right taking place, ordering that it should cease when it has already taken place and preventing it causing irreparable damage to the right. It does not seek to provide compensation for the person but only to punish the infringer of the right and put a stop to its violation. This action can be taken by any person who has his rights affected, by his representative or by the representatives of legal entities, institutions and organisations.

267. A third aspect is the inviolability of communications, a principle recognised in article 2, para. 10 of the Constitution, which provides that everybody has the right to the confidentiality and inviolability of his communications and private documents. Communications, telecommunications or their instruments, can only be opened, impounded, intercepted or interfered with by a court order citing the grounds therefor. It is also provided that private documents obtained by violating this precept shall have no legal validity.

268. For its part, the Penal Code provides in its article 151 and following, that a person who unlawfully opens a letter, document, telegram, radiotelegram, telephone message or other document of a similar nature that is not addressed to him, or unlawfully takes possession of any such document even if it is open, shall be liable to imprisonment of not more than 2 years and to 60 to 90 days' fine. Also a person who unlawfully interferes with or listens to a telephone or similar conversation shall be liable to imprisonment for not less than 1 and not more than 3 years. The punishment is increased to not less than 3 or more than 5 years and dismissal from his post if the offender is a public servant. A person who unlawfully deletes the address on a letter or telegram or misdirects it, even if he has not opened it, is liable to 20 to 52 days' community service.

269. Another subject viz. unlawful attacks on the honour of an individual, is dealt with in the Penal Code, chapter V title II "Offences against honour", which lays down punishments for insults, calumny and defamation. It defines the first as an offence or outrage against a person taking the form of words,

gestures or assault. The penalty in such cases will be community service for 10 to 40 days and 60 to 90 days' fine. Calumny is defined as a person falsely accusing another of a crime and the penalty is 90 to 120 days' fine. Lastly, defamation is an act in which, in the presence of several persons gathered together or separately but in a manner that allows the information to be spread, attributing to a person an act, a quality or a type of conduct that may damage his honour or reputation. In this case the penalty will be imprisonment of not more than 2 years and 30 - 120 days' fine. If the offence is committed through a book, the press or other mass medium, the penalty shall be imprisonment of not less than 1 and not more than 3 years and 65 - 120 days' fine.

Article 18 - Freedom of thought, conscience and religion

270. Article 2 para. 3 of the 1993 Constitution defends the right laid down in article 18 of the Covenant on Civil and Political Rights to freedom of conscience and religion and states that everybody has the right to freedom of conscience and religion whether individually or in association with others. It is thus laid down that there shall be no persecution for ideas or beliefs and that there is no such thing as a crime of opinion.

271. Similarly, it is provided that the public exercise of all religions is free, provided that it does not offend morality or threaten public order. Similarly, paragraph 18 of the same article of the Constitution protects the right of persons to keep their own counsel regarding their political, philosophical, religious or other ideas. Another provision of the Constitution that protects these rights is article 14 which, in its third paragraph, states that religious education shall be given with respect for freedom of conscience.

272. To demonstrate the freedom of religion the main religions or denominations active in Peru are given below:

Jehovah's Witnesses
Mormons
Seventh Day Adventists
Christian and Missionary Alliance Church
Pentecostal Churches
Baptists
Followers of Krishna, and
Reformed Jewish Religion.

273. As for religious education, reference may be made to the General Education Act No. 23384 of 18 May 1982, which prohibits, with penalties for infringement, any form of discrimination based on sex, race, religious belief, political adherence, language, occupation, civil, social or economic status against a pupil and a pupil's parents (art. 4, para. [e]).

Article 19 - Freedom of opinion and expression of opinion

274. This article refers to the right to information and also to the duties, in particular, of periodicals and the media. In Peru the legal framework that protects freedom of information is the Constitution, since there is no law on the press in force. It should be remarked that Decree Law No. 22244 of 19 April 1978, setting forth such a law, was repealed in 1981 by Statutory Decree No. 78. In regard to freedom of information and expression, there has been no

supplementary development of regulations. What is extensively protected by legal provisions - although without severe penalties - is the commission of a press offence: (Statutory Decree No. 635), to the prejudice of any citizen affected by the power of information of the press.

275. Radio and other broadcasting and spreading information through telecommunications in general are specifically regulated in regard to their characteristics, functions and other features by the Telecommunications Act (Supreme Decree No. 013-93-TCC) and by the general regulations issued under that act (Supreme Decree No. 06-94-TCC).

276. Articles 22 and 23 of the Telecommunications Act describe the formalities necessary to be allotted a frequency band. To offer public broadcasting services a communication will be required and to offer private broadcasting services, first an authorisation, then a permit and finally a licence. These formalities for obtaining a licence are detailed in chapter 1 title II of the Act, which deals with operating conditions.

277. As for the restrictions on ownership of a radio station, article 23 of the Act prohibits issue of a licence to more than one radio station in the same frequency band per locality and extends that restriction to the shareholders of the licensee firm. For this purpose a single legal entity or two legal entities whose associated shareholders, directors or managers are related within the fourth degree of consanguinity or the second decree of affinity, are considered to be one entity. Any change in the structure of the legal entity must be communicated to the Ministry of Transport, Communication, Housing and Construction. These are basically the requirements and limitations on installing a broadcasting facility in Peru.

278. A journalist's work in Peru is covered or protected by provisions of the law, but in reality there are forces of violence that exert a strong pressure on journalistic work, particularly on political journalism. These forces have strongly attacked this sector of journalism in the last few years with the intention of intimidating journalists and killing off ideas and freedom.

279. To conclude, the efforts and actions of the government must be borne in mind - even at the cost of obvious failures inside itself and its forces - to encourage the entry into Peru of the greatest possible number of press organs with a view to gradually moving ahead from violence and obscurity to a brighter future for all the citizens and institutions that have a right to be informed and to express themselves in order to unify knowledge of the management of the country from the inside and towards the outside.

280. The press agencies that enter Peru are as follows: The German Press Agency (DPA), The CNR News Agency (National Radio Coordinator), The EFE News Agency plc, The ALTER Press Agency, The France-Presse Agency (AFP), The National Associated Press Agency (ANSA), The Inter Press Service and United Press International (UPI).

281. The Constitution protects the right to freedom of information, opinion, expression and propagation of thought, through the spoken word, the written word or pictorially by any means of mass communication, without prior authorisation or submission to censorship or any other obstacle.

282. For its part, the Penal Code in article 169 lays down penalties for violation of the freedom of expression and provides that any public official who, abusing his position, suspends or closes any means of mass communication or prevents its circulation or dissemination, shall be punished by a penalty of not less than 2 or more than 6 years' imprisonment and disqualification.

283. It must be mentioned that the anxiety of the Peruvian government to afford protection and to prohibit propaganda and communication activities that promote or incite racial discrimination is shared by the Radio and Television Association of Peru, a body that groups together the radio broadcasting and television companies operating in Peru, who have agreed to exclude from their broadcasts any comment offensive to the beliefs of others and that subjects a class and/or race to opprobrium, as stated in the Code of Ethics of that Association. In this connection, they take every care to see that the language used in broadcasting shall not contain words that throw scorn on belief, race, colour, nationality, etc.

Article 20 - Prohibition of any propaganda for war

284. The 1993 Peruvian Constitution in article 2, paras 3 and 4, provides that everyone has the right to freedom of conscience and religion, in individual or collective form. There can be no persecution on grounds of ideas or beliefs. There is no offence of opinion and the public exercise of all faiths is free, provided that it does not offend morals or disturb public order.

285. Thus in article 50 it also stipulates that, within a regime of independence and autonomy, the State recognises the Catholic Church as an important element in the historical, cultural and moral formation of Peru and collaborates with it. The State also respects other denominations and may establish forms of collaboration with them.

286. The Government, in its desire for pacification, published Decree Law No. 25475, which stipulates in its article 2, that anybody who provokes, creates or maintains a state of anxiety, terror or fear among the population or part of the population or commits acts against life, security of person, health, individual freedom and safety, property, the security of public buildings, roads or means of communication or transport of any kind, electricity pylons and transmission lines, power plants or any other goods or services involving the use of weapons, explosive materials or devices or any other means which may cause damage or serious disturbance of the peace or affect international relations or the security of the State and society, shall be punished with imprisonment for not less than 20 years.

287. Moreover, article 7 of the same Decree Law, states that a sentence of not less than 6 years or more than 12 years imprisonment shall be imposed on anyone who publicly or through any medium defends the ideas of terrorism or persons that have committed terrorist acts. A Peruvian citizen who commits this offence outside the territory of the Republic in addition to the sentence of imprisonment, will be punished with the loss of Peruvian nationality.

288. The government considers that it is a much more serious offence when a person takes advantage of his position as an educator or teacher to influence his pupils by defending terrorism. It has therefore been obliged to issue a special Decree Law to cover this type of offence, which it has defined as

treason. The law in question is Decree Law No. 25880 of 26 November 1992, and it stipulates in its article 1 that anybody who takes advantage of his situation as teacher or educator to influence his students by defending terrorism shall be sentenced for the crime of treason, which carries the maximum penalty of life imprisonment, the minimum penalty being left to the discretion of the judge, depending on the seriousness of the offence.

289. Although Peruvian legislation contains no specific act dealing with propaganda in favour of war or the propagation of national, racial or religious hatred that constitutes incitement to discrimination and hostility, we believe that in the field of violence we have made a great step forward and this represents an important beginning, so that we will be able in the future to carry on legislating on the outstanding issues.

290. Moreover, it is important to point out that in Peru there are large populations of other races such as Jews, Arabs, Japanese, Chinese, etc. There is no type of discrimination against them and they are fully authorised and completely free to establish their own religious centres, associations, sports clubs, schools, etc.

Article 21 - Right to peaceful assembly

291. The right to freedom of peaceful assembly is also covered by a provision of the Constitution. The 1993 Constitution in article 2, para. 12, protects everybody's right to meet peacefully, without weapons and stipulates that meetings, whether in private or in places open to the public, do not require prior notification and those convened out of doors require prior notification to the authorities, which may prohibit them only for sound reasons of public security or health.

292. The Peruvian Penal Code issued on 13 April 1991 protects the right to freedom of assembly and stipulates the type of offence and penalties in case of violation of that right. In articles 166 and 167 it defines offences against the freedom of assembly and states that the constitutive elements of the offence are that the meeting should be public, lawful and peaceful, that said meeting should be prevented or hindered and that the means employed should be threats and violence. The penalty in these cases will be imprisonment of not more than 1 year and 60 to 90 days' fine. The penalty is increased if the person preventing the meeting is a public servant abusing his powers. In this case the sentence shall be imprisonment of not less than 2 or more than 4 years and disqualification for 1 to 2 years.

293. The body with the task of giving or denying permission is the Lima Prefecture, which issues permits for activities in closed premises, such as festivals to which an entrance fee is charged. The requirements are: (a) a request addressed to the prefect of the department (original and three copies); (b) payment of royalties; (c) sworn declaration to the municipality concerned; (d) hire of the premises; (e) operating licence; and (f) civil defence certificate. These requirements are laid down in a prefectural order issued many years ago.

294. Permits for marches, meetings, etc. on public roads or in public squares are required in the second military region (Fuerte Rimac) because of the state

of emergency existing today in Peru. The permits are denied if it is foreseeable that public order will be disturbed.

Article 22 - Freedom of association

295. This article recognises rights of association and the specific right to found and become a member of trade unions. In Peru, from the point of view of the law, freedom of association may be divided into the following categories: (a) non-profit-making associations, regulated by the Civil Code; (b) profit-making associations (commercial firms), regulated by the General Company Act; (c) co-operatives, regulated by the General Act on Cooperatives; (d) Trade unions, regulated by the Act on Collective Labour Relations; (e) political organisations, which do not have a specific regulatory law and which are governed by various provisions ranging from the Constitution to regulations issued by the National Election Board; and (f) human rights organisations.

Non-profit making associations

296. The 1993 Constitution, in article 2, para. 13, states that everybody has the right to band together and to set up foundations and various forms of legal non-profit-making organisations without prior authorisation and in accordance with the law. These associations cannot be dissolved by administrative decision. This type of association is regulated by the Civil Code in the second section of Book I. These provisions relate to associations, foundations, committees, and peasant and ethnic communities. The requirement is laid down that they should be entered in the appropriate register, but only to confer on them the status of legal entities and not to make possible their establishment as valid forms of organisation.

297. Here mention should be made of organisations concerned with the defence and promotion of human rights in Peru. These organisations are quite numerous and have developed since the beginning of terrorist activities as means of reporting violations of human rights (see also paragraph 307). As regards their relationship with the State, their existence is permitted on an equality with other forms of private organisation, although sometimes confrontations have occurred originating in different ways of understanding the struggle against subversion.

Profit-making associations

298. The 1993 Constitution states in its article 59 that the State guarantees the freedom of enterprise. The General Company Act is the specific piece of legislation that regulates the development of this type of organisation. The Act provides for the following types of associations: general partnership, limited partnership, partnership limited by shares, corporation, commercial company with limited liability, public company and participatory association. These forms of organisation differ mainly in the liability of their members towards third persons and the ways in which the profits are distributed.

299. These companies must be entered on the register in order to be categorized as legal entities, without which requirement their actions are attributed to the persons that carry them out who then have unlimited liability towards third persons, thus not achieving one of the main purposes of forming a company.

300. These companies may be liquidated by order of the Supreme Court at the request of the executive authorities if their purposes or activities are contrary to public order and good custom. The executive authorities can also, through a Supreme Resolution, order a company that has decided to liquidate itself to continue in activity on the grounds that such continuance will be of public utility and necessity.

Co-operatives

301. This form of organisation developed extensively, particularly during the military governments of the 70s. Governmental encouragement was given to the formation of co-operatives with entrepreneurial management. The most noteworthy were agro-industrial co-operatives, expropriated from their owners during the agrarian reform. Later, savings and loan co-operatives were developed in which the depositors became members of the company. The law regulating the activities of co-operatives is the General Co-operatives Act.

302. Most of these co-operatives gradually lost government support and as a result their situation became more and more unstable so that finally in the last few years many of them disappeared or went over to other more efficient forms of enterprise.

Trade unions

303. The 1993 Constitution in its article 28 recognises the right to trade union membership, collective bargaining and strikes, and guarantees its democratic exercise. At the present time the exercise of the right to belong to trade unions is regulated by the Act on Collective Labour Relations which lays down the prerequisites for forming trade unions, the ways in which associations, including employers' associations, can be formed and the procedures for winding them up. The law also regulates the forms of participation of the workers in the management of their trade unions, laying down rules that permit democratic control of decision-making. Furthermore, the ways in which trade union leaders may act in order to fulfil their trade union commitments are specified.

304. It should be noted in this regard that members of the armed forces or the national police are forbidden to form or affiliate themselves to trade unions. This prohibition extends to public servants with authority to take decisions and those who hold positions of trust or management posts (1993 Constitution, article 42).

305. Similarly, the State recognises the right to form trade unions, to carry out collective bargaining and to strike, guaranteeing its democratic exercise: (a) it guarantees trade union freedom; (b) it encourages collective bargaining and the peaceful settlement of labour disputes. Collective contracts have a binding force in the sphere which they cover; (c) it regulates the right to strike so that it is exercised in harmony with the interests of society and lays down exceptions and restrictions on it (art. 28, 1993 Constitution).

Political parties

306. Article 35 of the 1993 Constitution states that citizens may exercise their rights individually or through political organisations such as parties, movements or alliances in conformity with the law. The same article states that

entry on the register grants them legal personality. At the present time a law is under discussion that regulates the activities of political parties in Peru. As said in the Constitution, it is sought to ensure democratic procedures within political parties; at the moment this does not occur, since many parties are directed by permanent leaderships, making it impossible to change the managing cadres of these organisations. It is also wished to make it possible to audit properly the sources of finance of political parties, so as to avoid acts of corruption such as those that have occurred in other countries and are at present being discovered.

Human rights organisations

307. In Peru, as a result of the difficult situation described earlier and the protection of the constitutional rights that lay down freedom of association, there has been a development of groups to protect human rights, organised as non-governmental organisations. Most of these non-governmental organisations, of which there are 44 at the moment, belong to the National Human Rights Co-ordination Organization whose main activities are carried out through various working groups. The Co-ordination Organization has a structure based on a general assembly, a governing board, a standing commission and an executive secretariat. The Organization publishes annual reports in which an account is given of the main acts of violence that have been verified in Peru.

Article 23 - Protection of the family

308. The rights laid down in article 23 of the Covenant on Civil and Political Rights, referring to the family and marriage, are protected by the 1993 Constitution in its articles 4, 5 and 6.

309. Article 4 deals with protection of the family and promotion of marriage. It recognises the family and marriage as natural and fundamental institutions of society. It states that the forms of marriage and the grounds for separation and divorce are regulated by the law. The rules are contained in the 1984 Civil Code.

310. Article 5 protects stable unions between a man and a woman outside marriage. It stipulates that the stable union of a man and a woman, free of matrimonial ties and who in fact form a home, that is to say conjugal cohabitation, gives rise to a community of property subject to the conditions governing a communal marital estate so far as they are applicable.

311. Article 6 regulates national population policy, establishing as its objective the dissemination and promotion of responsible fatherhood and motherhood and recognising the right of individuals to decide.

312. The State promotes this policy through suitable education and information programmes and access to the necessary means not injurious to health or life. Similarly, it describes the relationship between parents and children in regard to food, education, care and respect. It protects equality between children born in and out of wedlock by proclaiming that all children have equal duties and rights. It is likewise prohibited to make any mention of the marital status of parents and the nature of filiation in civil registers or in any other identity documents.

313. For Peru, the family is a natural and fundamental institution of the nation and is necessary for social development. The Peruvian State protects the family by laying down standards that establish the rights and duties of its members and regulating its formation by developing a population policy designed to teach the responsibilities of fatherhood and motherhood.

314. Book III of the 1984 Civil Code is concerned with family law, thus contributing to the strengthening and consolidation of that institution. In its article 326 the Civil Code recognises and protects the family constituted by the cohabitation of a couple without official marriage, stating that a factual union voluntarily entered into and maintained between a man and a woman free of matrimonial ties with a view to achieving ends and fulfilling duties similar to those of marriage, gives rise to a communal estate subject to the conditions governing a conjugal partnership so far as they are applicable, provided that such union has lasted for at least two years without a break.

315. Another important fact is that, in the section relating to private international law and specifically as regards marriage, the Civil Code provides that capacity to contract matrimony and its essential requirements for it are governed for each of the contractual parties by the laws of their respective domiciles (art. 2075). Moreover, the form of the marriage will be regulated by the law of the place in which it was contracted (art. 2076).

316. Reference may also be made to the fact that in regard to the rights and duties of the spouses and the rules governing the marital estate, nullity and the right to divorce and judicial separation the law that is applicable is that of the conjugal domicile.

317. The procedures for contracting a valid civil marriage are regulated in the Civil Code in articles 248 and following:

(a) anybody wishing to enter into matrimony must announce the fact orally or in writing to the provincial or district mayor in his or her domicile;

(b) they must provide a certified copy of birth certificates, proof of domicile and a medical certificate;

(c) according to the circumstances, they must present the documents needed, such as a certified copy of the death certificate of a previous spouse or the grant of divorce or annulment of a previous marriage, a consular certificate of celibacy or widowhood, etc. according to the case;

(d) each of the partners must present two witnesses who have reached their majority and whom they have known for at least three years beforehand, who declare on oath whether there is any impediment to the marriage;

(e) the judge may exempt the claimants from the obligations to present any documents when it is very difficult or impossible to obtain them;

(f) the marriage will be performed by the mayor, who may delegate that function in writing to other municipal officials, hospital directors or chiefs, parish priests or members of the governing bodies of peasant and ethnic communities.

318. Impediments are listed in article 241 of the Civil Code. The following may not enter into matrimony: (a) persons under age, except with the consent of their parents or an order of the courts, provided that the male is 16 years of age and the female 14; (b) persons suffering from chronic, contagious and hereditary diseases; (c) persons suffering chronically from mental illness; (d) deaf mutes, blind and deaf persons, blind-mutes and persons who cannot express their wishes beyond a doubt; and (e) persons already married. Similarly, articles 242 and 243 of the Code lay down other specific impediments and give reasons for them.

319. As for the protection of children born in or out of wedlock, if the marriage should be dissolved, their rights are guaranteed by the law, which states that the parents are still under an obligation to protect them and provide for their maintenance. There is no differentiation between children born in or out of wedlock, as stated in article 6 of the Constitution.

320. As for divorce, the Civil Code states that it may be requested for reasons of adultery, ill-treatment, attempts on the life of a spouse, grievous insult, unjustified desertion of the conjugal home for more than two years, dishonourable conduct which makes life in common unbearable, the habitual and unjustified use of hallucinogenic drugs, serious venereal disease contracted after marriage, homosexuality continuing after marriage and being sentenced after marriage for an offence leading to imprisonment for more than two years. Concerning the procedure, even if divorce is requested, the judge may award separation if it appears probable that the spouses may be reconciled. If no appeal is made against the granting of a divorce, it will be sent for an opinion to a higher court.

321. As for the custody of children in the case of divorce or separation, the courts decide that they will be placed in the custody of the spouse who has been the innocent party in the separation or divorce or, if this is not considered conducive to the welfare of the children, they are placed in the custody of the other spouse or a third person. If both partners are guilty, boys above the age of 7 will remain in the custody of the father and daughters under the age of legal majority and sons under the age of 7 years will remain in the care of the mother unless the judge decides otherwise for the welfare of the children.

322. Parental authority is assumed by the person in whose custody the children are placed. The court determines the maintenance payable by the parents or one of them for the children and also that payable by one spouse to the other. If the parents cannot come to an agreement concerning visiting rights, the court will decide.

323. The 1991 Penal Code also contains provisions for protecting the family by classifying offences that might be committed in family matters. In articles 139 to 142 penalties are laid down for a married person who enters into matrimony, an unmarried person, who deliberately marries a person already married and officials who knowingly celebrate illegal marriages or fail to observe the formalities laid down in the law. In articles 143 to 146 penalties are laid

down for alterations and deletions in the records of the marital status of another person with a view to allotting rights to which that person is not entitled. In articles 147 and 148 penalties are laid down for interference with parental authority. In articles 149 and 150 penalties are laid down for failure to give family assistance, such as failing to pay the maintenance due under a sentence of the court or deserting a wife who has been made pregnant if she is in a critical situation.

324. Reference may be made to the Minors' Code which regulates these matters which are so important for the development of Peruvian society.

Suspension of parental authority

"Article 83, para (c). Parental authority is withdrawn from the parents in the following cases: [...] (c) because of the legally verified absence of the father or the mother. This article relates to cases in which parental authority is suspended. Specifically, paragraph (c) is based on the hypothesis that the absence of either the father or mother has been legally reported. Thenceforth, in order to avoid a situation that puts at risk the security of minors, a declaration is made that parental authority is suspended."

Petition

"Article 91. A father or mother from whom the spouse or cohabitee has abducted a child and wishes to be granted the right to custody and maintenance shall submit a petition, accompanied by an identity document, the birth certificate and the pertinent evidence. A child or adolescent can be maintained by anybody with a legitimate interest. The Code provides a way out in disputes that may arise concerning the custody of a minor, disputes that usually occur because the parents who are separated in fact often prevent one parent from exercising the right to have custody of the juvenile in question. In these cases the law enables the father or mother concerned to submit a petition attaching for the purpose the documentation proving his or her links with the minor."

Judge's discretion

"Article 92. If the parents fail to agree the judge will make an award taking into account the following recommendations:

(a) the child shall remain with the spouse with whom it has lived for a longer time, provided that this is in its interest;

(b) the mother should be given preference when the child is less than two years old.

This article provides states that the judge has the power to decide if the parents fail to reach an agreement on the custody of a minor. In this case he will have to determine whether the child is under two years old, in which case preference will be given to the mother. Otherwise preference will be given to whoever has lived longer with the minor concerned."

Visiting conditions

"Article 98. A father or mother who prevents or restricts the right of visit to a child will submit a petition, accompanied by the birth certificate certifying his or her relationship. Here the path to be followed by the father or mother prevented from exercising the right to visit his or her child, is determined. It is based on the idea that if visiting conditions have been set permitting the father or mother to establish the necessary contact with the minor, these rights cannot be ignored without justification and so whoever is harmed by this attitude has the right to petition for the safeguarding of that right."

Article 24 - Protection of the child

325. The protection of Peruvian children is and has been a subject of grave concern in Peru since the beginning. The 1979 Constitution, like the one promulgated in 1993, lays down in article 1 that the defence of the human person and respect for dignity are the supreme objectives of society and the State. It must be emphasised that in Peru a human being is considered to exist upon conception. Once the embryo has been formed it is already a person and has all the acquired civil rights and property rights will be acquired once the child is born. This is what the Civil Code provides for.

326. Article 4 of the 1993 Constitution states explicitly that the community and the State will afford special protection to children and adolescents. In this article the will of the State to adopt special measures for the protection of minors can be clearly seen. Thus, in an effort to regulate better the rights of minors, Decree Law No. 26102 "Children's and Adolescents' Code" was promulgated on 29 December 1992 and entered into force on 28 June 1993.

327. This Code marks a response to a reality that went beyond the provisions of the code that was repealed. A body of law was necessary that would protect and make viable the development of the Peruvian child population that is experiencing its worst conditions. Everybody knows the most serious situation faced by minors in Peru due, above all else, to economic problems and to adjustment programmes that do not necessarily take into account the situation of children. For example, the infant mortality rate in 1991 was 85.7 per thousand. 45% of Peruvian children suffer from some degree of malnutrition, mostly of a chronic nature. Of every hundred children who enter the first year of school studies, only 31 finish primary education at the proper age, 45 have to repeat classes and 24 give up their studies completely. As a response to all this came this new body of law which is better adapted to Peruvian realities and introduces modern mechanisms aimed at improving the life of children - the future adult Peruvians.

328. The Minors' Code contains several innovations. The first is that its title has been changed from Minors' Code to Children's and Adolescents' Code. The Code differentiates between them. Thus a child is a human being from conception until 12 years of age and an adolescent from the age of 12 to the age of 18, making use of the development psychology which begins with puberty. The child and the adolescent are persons before the law and this Code is designed to ensure that the child makes its rights respected and is therefore conscious of his acts.

329. In the preliminary title, article IV, it is stated that the Code applies to all children and adolescents living in Peruvian territory with no distinction by virtue of race, colour, sex, language, religion, political opinion, nationality, social origin, economic status, ethnic origin, physical or mental handicap or any other condition of the child or of its parents or the persons responsible for it. This provision, means that the Code applies to all minors without discrimination of any type.

330. An adolescent's civil capacity is recognised, since every minor from 12 years of age onwards has the capacity to carry out certain tasks and therefore to obtain the right of association, as stated in the convention on the rights of the child and also as reflected in the penal part of the Code. If an adolescent commits an offence, social educational measures will be taken ranging from a simple warning to imprisonment for a maximum period of 3 years. Imprisonment will take place only in very serious cases, such as armed assault with weapons or rape with aggravating circumstances.

331. These articles were introduced with a view to guaranteeing that a child cannot be imprisoned under any pretext of protection unless in response to a written court order. The child has all the rights of the citizen. In this case proceedings for habeas corpus can be launched and the child must undergo due process of law in case of committing an offence like any other citizen. An adolescent's right to work is recognised. This does not mean that children are encouraged to work in the streets but this has become a fact of life for thousands of minors, abandoned at an early age by their parents because they cannot maintain them, for minors who have run away from home as a result of ill-treatment by their parents, or because they see street begging and thieving as a better way of life. It is for that reason that the law covers this and serves reality. Today, children and adolescents have the right to social security and can count on a system of enrolment as independent workers in the municipalities which co-ordinate with the schools so that working children can also study at the same time.

332. This Code also provides for a national system of assistance for children and adolescents regulated by a governing body with the task of co-ordinating all the efforts of the public and the government. This is because the problem of the Peruvian child is a matter not only for the State but also for the public as a whole and for that reason policies of care, promotion and prevention are being adopted for the benefit of child workers, child drug addicts, displaced children, child agents and victims of terrorism and children with special needs. Within this system a children's protection office operates autonomously in all the municipalities in Peru and minors can file their complaints with it as can members of their families, friends and even strangers who get to know of any type of ill-treatment.

333. This Code has been established not only to protect minors but also to protect their family group and especially mothers, since it is the mother who has most influence on the behaviour of the child. In this respect it is stated in the preliminary title that any problem of a child or adolescent must be seen as a human problem and not as a case for the courts. For that reason, many matters are dealt with in the Civil Code, such as parental authority. All cases are heard before juvenile courts that concern a child or his family group, as for example a dispute concerning maintenance. These are specialised courts who have the task of solving the problem. The only point that has not been included

is the case of divorce of the parents, since there are many aspects of conjugal assets that prevent an agreement being reached.

334. Furthermore, it is provided that every Peruvian child and adolescent has the right to a name and to Peruvian nationality, to know his parents and to be cared for by them. His birth will be registered immediately by his mother or a responsible person in the appropriate civil register. The local municipality responsible for this register will provide the first birth certificate free of charge within twenty-four hours. If the birth is not registered within 30 days, the entry may be made by the administrative route in conformity with the provisions of chapter VI of the second book of the Code. The State guarantees this right through the establishment of a single registration of identity.

335. For the purposes of the right to a name, the relevant provisions of the Civil Code will apply. Basically, article 6 of the Code deals with the rights of minors to a name, identity and nationality. However, the legal provision states something more that deserves to be emphasised, when in line with its protective nature it indicates that the minor has the right to know his parents and to be cared for by them.

336. As for the identification of children and adolescents, this body of law stipulates that the fingerprints of the mother and the pelmatogram of the child will be entered in the birth certificate, together with the data required by the nature of the document. This provision establishes the procedure for the identification of the newborn. In this respect, the birth certificate must contain the fingerprints of the mother and the pelmatogram of the child, together with the other data required in the document (art. 7).

337. Under Administrative Order No. 036-93-CE-PJ of 3 August 1993 a family division was created in the High Court of Lima with jurisdiction over cases relating to children and adolescents, with specialised magistrates who guarantee an effective and complete protection of childhood and adolescence, since, according to the statistics for the civil division of the High Court of Lima in 1992, the case load concerning minors and family matters represented 36% of all judicial proceedings, hence the need to establish a separate division to take cognisance of these matters.

338. As for the registration of minors, new regulations have been approved for the administrative registration under Supreme Decree No. 043-93-JUS of births of children and adolescents not recorded within the legal time limit. This provision stipulates that minors not registered up to 18 years of age can be registered within the jurisdiction where they were born. The bodies competent to carry out the administrative registration of births are the Civil Register Offices in district and provincial capitals and municipalities with centres for minors, Peruvian consulates, ethnic communities and authorised municipal agencies. Entries will be made in the birth certificates book, together with the name of the mother or the father of the minor, his grandparents, elder brothers and sisters and brothers and sisters of the parents. This can also be requested by tutors or guardians, the headmasters of educational centres, official guardians of children and adolescents, juvenile judges and public prosecutors.

339. Finally, the right to nationality is a constitutional principle, as is said in the appropriate article; "Everybody has a right to his nationality.

Nobody can be deprived of it nor can anyone be deprived of the right to obtain and renew a passport on or outside the territory of Peru.

Article 25 - Right to take part in the conduct of public affairs

340. Article 2 para. 27 of the Constitution states that everybody has a right to participate in the political, economic, social and cultural life of the nation and that the citizens, in accordance with the law, have the right of election, dismissal or revocation of authorities, legislative initiative and referendum. The Constitution further regulates in chapter III "Political rights and duties", everything connected with this matter. In the second part of article 2, numeral 17, it is laid down that the citizens, in accordance with the law, have the right of election, dismissal or revocation of authorities, of initiating laws and of holding referendums.

341. Article 30 states that Peruvians over 18 years of age are citizens and to be able to exercise their citizenship are required to be registered on the electoral roll. This exercise of citizenship can be suspended by sentence of a court prohibiting it, by sentence to imprisonment or by sentence to loss of political rights (art. 32).

342. Similarly, article 31 clearly establishes the political rights that Peruvian citizens enjoy:

(a) to participate in public affairs through referendums;

(b) to initiate legislation;

(c) to dismiss authorities and demand an account of their actions;

(d) freely to stand for election and elect their representatives in accordance with the conditions and procedures laid down by an institutional act;

(e) to participate in local government at the relevant level. The law regulates and promotes the direct or indirect mechanisms by which they can participate;

(f) to vote, provided they have legal capacity.

343. Any act is null and punishable that prohibits or limits citizens' exercise of their rights. The vote is personal, equal, free, secret and mandatory up to the age of 70. After that age it is optional. Indeed, the citizens of Peru must obligatorily put their names on the Peruvian electoral roll so that, once the proof of identity has been collected - the so-called electoral card - they can be identified when required and when the occasion arises exercise their right to vote or to be voted for, thus electing the candidate of their choice to occupy posts within the public administration.

344. On the other hand, the exercise of civic rights can be suspended by order of the court forbidding it, by a sentence of imprisonment and by a sentence accompanied by loss of political rights (art.33). The tenor of this article suggests that these are the only lawful means of limiting a person's rights as an active citizen and that they are a safety measure in many cases.

345. As for serving members of the armed forces and the national police, it is laid down that they cannot vote or stand for election and that no other prohibitions exist or can be created (art. 34). It is considered that the prerogative of standing for election or voting is restricted exclusively to civilians in so far as they do not have the responsibility for maintaining law and order and can use the means most easily at their disposal, provided that they are lawful.

346. It is further established that all public officials and employees are in the service of the nation. The President of the Republic holds the highest post in that service, followed by the members of Congress, ministers of State, members of the Constitutional Court and the Council of the Magistracy, the senior judges, the Attorney General and the Ombudsman, on a basis of equality, and the representatives of decentralised bodies and mayors, in accordance with the law (Art. 39).

347. It must be pointed out that the law regulates entry to an administrative career and the rights, duties and responsibilities of public servants. Officials who hold political posts or positions of trust are not included in this category. No public official or servant can hold more than one remunerated public employment or post, except one per teaching function. Workers in State enterprises or mixed State and private companies are not included in the civil service (art. 40).

348. As for the right of public servants to trade union membership and their right to strike, these are recognised in the Constitution on the clear understanding that they do not include State officials with decision-making powers or who hold confidential or management posts, or the members of the armed forces and the national police (art. 42).

349. In addition special mention must be made of the penal regulations since, in the Penal Code, in chapter III "Personal application", article 10, spells out the procedure to be followed by the court when handing down a sentence, and then clearly states that the penal law is applied equally to all the inhabitants of Peru and that prerogatives granted to certain persons by reason of function or post must be specifically provided for in the law or in international treaties.

Article 26 - Prohibition of discrimination

350. Article 26 of the Covenant on Civil and Political Rights refers to the right of everybody to receive equal treatment before the law and to the right of non-discrimination by reason of race, colour, sex, language, religion, political opinion, etc. In Peru these rights are protected by the 1993 Constitution in the following articles:

(a) Article 2, paragraph 2, stipulates that everybody has the right to equality before the law and that nobody can be discriminated against for reasons of origin, race, sex, language, religion, opinion, economic status or any other pretext;

(b) Paragraph 3 of the same article protects the liberty of conscience and religion and, at the same time, prohibits persecution for ideas or beliefs. It also states that there is no such thing as a crime of opinion;

(c) Paragraph 19 of the same article recognises a person's right to ethnic and cultural identity, the State being obliged to protect the ethnic and cultural diversity of the nation. In the same way it protects the right of every Peruvian to use his own language through an interpreter when appearing before any authority;

(d) Article 17, in its last paragraph, spells out the duty of the State to preserve cultural and linguistic variety in Peru while promoting national integration. National legislation prohibits any type of discrimination before the law for any reason whatsoever and promotes equality before the law of every individual.

351. As for the peasant and ethnic communities, which can be considered as minorities, they do not suffer from any lack of protection before the law, since article 89 of the Constitution recognises the legal existence and legal personality of the ethnic communities. It also recognises their autonomy and respects their cultural identity. Similarly, the Civil Code of 1984 recognises them and grants them legal protection in its articles 134 to 139.

352. In Peru there are various bodies given the task of hearing complaints of violations of human rights, among them the right not to suffer discrimination, and ensuring that everybody has the right to just and adequate compensation for any damage of which he may be victim as a result of a threat to his basic rights. Thus, the Constitution defines the task of the Defender of the People (Ombudsman), which is to defend the constitutional and basic rights of the person and the community and to monitor the fulfilment of the duties of the State administration and the provision of the citizens with public services (art. 162).

353. Similarly, it must be emphasised that, with the adoption of the new organizational structure of the Government Procurator's Department, Supreme Decree No. 009-93-JUS of 5 April 1993 established the Special Office of the Defender of the People and Human Rights as the body responsible for receiving complaints and carrying out investigations into illegal acts involving human rights' violations. Recently the Special Office sent representatives to the village of Mazamari in Satipo province, in the Department of Junin, to investigate the killing of 60 Ashaninkas, women, men and children, members of the largest indigenous community of Peru. The inquiries showed that crimes against humanity, ethnocide and abuses against indigenous communities had been committed and that the communities had suffered injuries and had been subjected to torture, forced labour and expulsion from their land.

354. Special mention must also be made of the activities of the National Council for Human Rights, a multilateral body under the Ministry of Justice with functions specified in Supreme Decree No. 038-93-JUS. The Council comprises representatives of the Ministry of Justice, the Ministry of the Interior, the Ministry of Defence, the Public Prosecutor's Department, the Ministry of Foreign Affairs, the Ministry of Education, the Catholic Church, non-governmental human rights organisations, the judiciary and the Commission for the Promotion of Peru Abroad.

355. The Council is the Executive's advisory body responsible for promoting, coordinating and supervising the protection of the fundamental rights of the person. Among its objectives and functions are the following:

(a) to help create proper awareness of respect for the fundamental rights of the person enshrined in the Constitution and other relevant laws;

(b) to assist in strengthening the rule of law as a guarantee for the full and effective validity of human rights;

(c) to consolidate the fundamental task of the State of guaranteeing unrestricted respect for human rights;

(d) to prepare and propose human rights policy to the Executive;

(e) to establish institutional relations with organisations concerned with the defence, promotion and protection of human rights;

(f) to process, make comments on and transmit to competent bodies information concerning missing persons communicated by the Public Prosecutor's Department the terms of Act No. 25592;

(g) to propose bills or amendments to human rights legislation (at the present moment, the Executive Secretariat of the National Council of Human Rights is preparing a bill for the establishment of a Standing Commission to Combat Racial Discrimination).

Article 27 - Rights of minorities

356. In Peru, the peasant and indigenous communities are recognized by law, have legal personality and enjoy autonomy in respect of organisation, communal work and the free use of their lands, as well as in economic and administrative matters within the framework established by the law. The ownership of their land is imprescriptible unless it is abandoned (art. 89 of the 1993 Constitution). The authorities of the communities, with the support of the peasant patrols, may administer justice within their territorial area in keeping with customary law, provided that they do not violate the fundamental rights of the person (art. 149 of the 1993 Constitution). For communities to have legal existence they must be entered in the Register of Legal Persons and be officially recogrised (art. 134 of the 1993 Constitution).

357. When the government of Peru ratifyied ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries in December 1993, at the same time as the United Nations proclaimed the International Year for the World's Indigenous People, it undertook to adopt specific measures to guarantee for indigenous and tribal peoples effective enjoyment of human rights and fundamental freedoms without any obstacle or discrimination and to do everything possible to improve the living conditions, participation and development of the indigenous peoples while respecting the values and social, cultural and religious and spiritual practices of the indigenous communities of the Andean and Amazon regions.

358. In addition, the 1984 Civil Code states that the peasant and indigenous communities are traditional and stable organisations of public interest, made up of individuals and intended to develop their assets for the general wellbeing of all the community members, in an equitable manner. Article 54 of the Environmental Code, (Statutory Decree No. 163 of 7 December 1990) recognises the

ancestral peasant and indigenous communities' right of ownership to their lands in the natural protected areas and in their zones of influence and promotes the participation of these communities.

359. The Agriculture Sector Investment Promotion Act, (Statutory Decree No. 653 of 1 August 1991) protects and preserves the peasant and indigenous communities. It provides that any agricultural producers with holdings of over 5 hectares, except for the peasant and indigenous communities, may place a lien on their lands for any individual or company in order to ensure fulfilment of their obligations. The priority of their creditors shall, without exception, be determined by the date the liens were entered in the public registers (art. 9). Furthermore, peasant and indigenous communities, as well as associative peasant enterprises, which are entitled to the control and use of lands suitable for forestry, may issue renewable 30-year leases, provided that their purpose is to establish and/or manage forest plantations.

360. The General Peasant Communities Act, Act No. 24656 of 13 April 1987, governs the peasant community in Peru as an organisation with its customs and practices, its systems of ownership and its institutions. This act is regulated by Supreme Decrees Nos. 008-91-TR of 15 February 1991, which establishes the regulations on legal personality, the members of the community and the administrative system, and Supreme Decree No. 004-92-TR of 25 February 1992, which adopted the regulations of the economic system of the Act. This act is supplemented by Act No. 25647 of 13 April 1987 concerning land demarcation and land title of the communities.

361. With these laws, the State hopes to achieve comprehensive development of the peasant communities by the following measures:

(a) Exemption from existing or future taxes on the communities and their enterprises, as regards both their own activities and imports of capital goods or purchases from local manufacturers (art. 28, Act No. 25647);

(b) priority in obtaining loans from government institutions and simplification of the loan requirements and facilities (art. 31);

(c) facilities, priority and preference in exports of their products (art. 32, Act No. 24657);

(d) the obligation of State agencies to grant them facilities for the industrialisation, transport and marketing of their products (art.33, Act No. 24657);

(e) Government promotion of and support for projects to extend the farming areas (reclamation, irrigation and reassignment of community lands (art. 36, Act No. 24657).

362. Similarly, along with the promulgation of Act No. 25509 of 25 May 1992 a start was made on implementing the granting of rural property title to rural holdings throughout the country. To that end the National Compensation and Social Development Fund (FONCODES) issued directives for the utilization of its resources for investment projects and other operations, which include the creation of implementation units for project administration, whereby the State

undertakes to contribute to the development projects managed by the grass-roots organisations. In this respect, the Agricultural Department of the Government of the Inca region, the Bureau of the Peasant Communities and the Legal Department of the Bartolomé de las Casas NGO Centre in Cuzco, have been instrumental in identifying and granting land titles to, and drafting the statutes of 40, Cuzco communities. As a result, on 30 March 1992 4976 peasant communities were entered in the National Register of Peasant Communities of the regional governments (annex 9).

363. Act No. 24636 also governs the organisation and operations of community enterprises and multi-community enterprises, in order to reduce under-employment among the peasants and provide training opportunities and services for the families living in the communities (art. 26). This legislation has also institutionalised the Community Credit Funds intended to obtain financial resources by various means and make it easier for community "micro-producers" to obtain credit. The Community Credit Funds serve as a link between the Rural Savings and Loan Funds, which are regulated by Act No. 25612 of 20 June 1992. The Government expects that both the Rural Savings and Loan Funds and the Community Loan Funds will be able over the medium term to administer the supply of credit and channel savings and resources in the rural areas more efficiently than the Agricultural Bank.

364. In addition the disappearance of special agrarian law with the enactment of the new Organization of Justice Act in 1990, will consolidate the single system of State jurisdiction, through new mechanisms for the settlement of community agricultural conflicts.

365. The Constitution grants the authorities of the peasant communities the power to administer justice within their territories in accordance with customary law, provided that they do not violate the fundamental rights of the individual. To this end forms of coordination will be established between this special jurisdiction and the justices of the peace and the other institutions of the judiciary (art. 149 of the Constitution).

Indigenous communities

366. In this regard the Constitution stipulates that the State shall promote the sustainable development of the Amazon region by means of appropriate legislation (art. 69 of the Constitution) (annex 8).

Work of the Catholic Church for the indigenous communities of the Amazon

367. The Peruvian government is mindful of the harsh realities of the problems connected with the indigenous communities: major efforts and creative action are required to overcome poverty and political and social violence as well as the lack of communication and separative intolerance which fosters marginalisation and racism. This diagnosis of Peruvian society is more relevant to the Amazon, (ignored through the ages), its population and the wealth of its culture. Consequently the State recognises the need to increase its presence by stepping up resource commitment and providing more efficient and timely services in order to ease the problem of marginalisation and move towards national integration. This obligation has been accepted in Peru, despite major budgetary constraints, not only by government agencies but by many private, social and religious institutions which have pooled their scarce economic resources, fired by a noble

humanist conviction to provide effectively for the most elementary needs of the indigenous peoples.

368. Particular mention should be made of the major contribution of the Catholic Church to the development of Peru in historical, cultural and moral terms. In this regard, given the lack of a government presence in various parts of the national territory, the Peruvian Church provides technical and agricultural training facilities, supports small income-generating projects, especially for the young, teaches indigenous persons to understand and win respect for their rights, defends the indigenous communities when their rights are infringed and promotes protection of the lands and natural resources of the indigenous people for the sake of their cultural survival: their philosophy of life, medicine, traditional education, independent structures and institutions. Many of the Church's contributions have given the State topical insight into the most urgent requirements of the indigenous communities, thus enabling it to review and redesign its policies and plans of action. For this reason, the Government of Peru plans to make greater efforts to give priority consideration to requirements in respect of agriculture, education, internal order and peacemaking, among other fields of action.

369. The Catholic Church, through the Peruvian Episcopal Conference, conducted a campaign in 1993 entitled "Sharing - Indigenous Peoples of the Amazon" to foster knowledge of the problems of the indigenous peoples and secure support by the Peruvian population for social welfare projects on behalf of the indigenous communities. Similarly, during the summer of 1993 Caritas of Peru, the Episcopal Social Welfare Commission (CEAS) and the Amazon Centre for Anthropology and Applied Studies implemented an emergency project on behalf of the inhabitants of the central forest, in order to meet their food and health requirements.

Measures of protection for the peasant and indigenous communities

370. In the context of the peacemaking strategy and in the face of the threat of violent ideologies which endanger the existence, identity and cultural values of the indigenous peoples, the State has encouraged the organisation of a system of peasant patrols.

371. Greater development of peasant patrols began at the end of the 1880s with growing support from the Government, including the supply of arms. The patrols have thus far served as a nucleus of the efforts to reconstruct the social life of communities devastated by the violence. The National Congress of Urban, Rural and Indigenous Patrols (May 1993) presented a project which would make the peasant patrols part of the system of national defence and of the army reserves. Mention may be made of the status of the patrols introduced in the northern sierra to provide protection against cattle rustlers. They constitute a system of defence that was recognised in 1988 as "peaceful, democratic and autonomous patrols" under Supreme Decree No. 12-88-IND, containing regulations on the organisation and functioning of such peasant patrols. This decree was superseded by Supreme Decree No. 2-93-DE-CCFFAA, which provided that it should be brought into line with the regulations on the organisation and functioning of self-defence committees (Supreme Decree No. 77-DE-92). Under the terms of Statutory Decree No. 741 dated 12 November 1991, recognition was given to the communities' self-defence committees. In the same way, Statutory Decree No. 740 lays down rules governing the possession and use of weapons and ammunition by

the peasant patrols. In the case of peasants captured by terrorist groups and obliged under duress to carry out terrorist activities for which they feel no support or sympathy, they will enjoy the benefit of immunity or remission of sentence, depending on the circumstances (art. 52 and 53 of Supreme Decree No. 015-93-JUS, Regulations of the Repentance Act and art. 3 of Statutory Decree No. 25499, the Repentance Act).

372. A summary is given below of the most important legal provisions connected with the subject in the 1993 Constitution and the ILO Convention on Indigenous and Tribal Peoples.

1993 Peruvian Constitution

373. Attention may be drawn to three articles of the Constitution referring to the rights of peasant and indigenous communities:

> "Article 2, paragraph 19. Everybody has the right to ethnic and cultural identity. The State recognises and protects the ethnic variety of the nation. Every Peruvian has the right to use his own language through an interpreter before any authority. Aliens have this same right when they are summoned before any authority."
>
> "Article 48. The official languages are Spanish and also, in areas where they predominate, Quechua, Aymara and other indigenous languages specified by law."
>
> "Article 89. Peasant and indigenous communities have a legal existence and legal personality. They are autonomous in respect of their organisation, their community work, the use and free disposal of their lands and economic and administrative matters within the framework established by the law. Ownership of their lands cannot be ceded unless they have been abandoned, as stipulated in the previous article. The State respects the cultural identity of the peasant and indigenous communities."

374. For many years attempts have been made to define ethnic, religious or linguistic minorities without an answer being found that is acceptable to the States belonging to the political bodies of the United Nations. Nevertheless, there is broad consensus on the basic elements that make up these terms.

375. Application of the principles promulgated in article 27 of the Covenant cannot be made conditional on a universally accepted definition of the term "minorities", but if the problem is examined without political prejudices and from a universal standpoint it must necessarily be recognised that the elements of this concept are well known.

376. There are objective criteria, among which is the existence within the population of a State of distinct population groups with stable ethnic, religious or linguistic characteristics that differ markedly from those of the rest of the population. Another objective criterion is the numerical importance of these groups. A third objective criterion is in the undominant position of the groups referred to in regard to the rest of the population. Dominant minority groups do not need to be protected. A final objective criterion lies in the legal status of the members of the groups mentioned in relation to the

State in which they reside. Generally, it is recognised that they must be subjects of that State.

377. A subjective criterion is the desire manifested by the members of the groups concerned to preserve their own characteristics.

378. The Human Rights Commission has not yet applied or interpreted article 27 except in two decisions concerning indigenous groups or individuals.

ILO Convention No. 107 on indigenous and tribal peoples

379. The only legal instrument in force which is specifically concerned with the rights of indigenous persons is ILO Convention No. 107 on indigenous and tribal peoples. Adopted in 1957, this convention has been severely criticised, particularly for its assimilationist approach and for the wide concessions given to national interests that water down its statements in favour of the rights of indigenous peoples.

380. Article 11 of the Convention provides that the members of the populations in question should be recognized as having the right to collective or individual ownership of the lands they traditionally occupy. Similarly, article 12 prohibits the transfer of indigenous villages from their "habitual territories", except in case of necessity on the grounds of national security, health or economic development and makes obligatory the payment of total compensation in the case of any transfers for those reasons.

381. At the outset the activities of the Inter-American Commission in regard to the rights of the indigenous peoples were based on a classical approach, that is to say that the Commission was concerned with the particular vulnerability of indigenous peoples, although it concentrated on the violation of rights common to everybody, indigenous or not, or in some cases on the principle of non-discrimination, i.e. the right of an indigenous person to be treated on a footing of equality with a non-indigenous person. The Commission considers that the protection of indigenous populations constitutes, for historic reasons and by virtue of moral and humanitarian principles, a sacred commitment of the States. It recognises also that in some countries measures have been adopted designed to punish crimes severely and to exact penalties from officials who, in flagrant abuse of their authority, have participated in offensive actions against indigenous peoples.

382. The Commission is also beginning to face up to another important problem, i.e. the destruction of indigenous culture through assimilationist educational programmes. In its report, Surinam expressed its concern at the way in which the education of ethnic groups is entrusted to missionaries who sometimes require conversion to the Christian faith as a condition for receiving an education. The Commission comments that such a practice is not only damaging to the social and religious background of the indigenous communities, giving rise to conflicts between children and their parents, but also discriminates against those who abide by their traditional faith, thus affecting their right of equal access to the fundamental right to education. The Commission believes that the obligation to extend such special protection to indigenous peoples now forms part of customary international law and is obligatory for all the countries of the region.

383. Reference may be made to the Peruvian Penal Code, which, in its article 15, treats of the so-called "error of understanding", as a result of which a person who, for reasons connected with his culture and customs, commits an act considered punishable without being able to understand that this act is an offence, or is committed in accordance with such an understanding, shall be exempt from liability. Similarly, it prescribes that when, with equal reason, this possibility is diminished, the punishment will be reduced.

384. As we see the standards laid down in the ILO Convention form part of the State's policy of protection of ethnic and racial minorities living in Peru.